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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Tuesday, March 4, 1997

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–26–AD; Amendment 39–9954; AD 97–05–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes. This action requires removal of the main rudder power control unit (PCU) and replacement with a serviceable unit. This amendment is prompted by a report of the installation of an incorrect bolt on the main rudder PCU. The actions specified in this AD are intended to prevent cracking of the bearing of the main rudder PCU due to installation of an incorrect bolt; such cracking could result in seizure of the bearing and resultant uncommanded rudder movement.

DATES: Effective March 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 1997.

Comments for inclusion in the Rules Docket must be received on or before May 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of cracking of the internal summing lever assembly bearing of the main rudder power control unit (PCU) on a Model 737 series airplane. Investigation revealed that a Hi-Lock bolt had been installed in the lever assembly bearing instead of the correct bolt, Boeing Part Number (P/N) 66–22749–1. Apparently, installation of the incorrect bolt was approved by the repair station performing the installation. The Hi-Lock bolt has a larger radius in the shoulder-to-shank transition than the correct bolt. The larger bolt radius created an interference fit that caused the inner race of the bearing to crack. Such cracking, if not detected and corrected, could cause the bearing to seize and, consequently, lead to an uncommanded rudder movement.

Explanation of Relevant Service Information

The FAA has reviewed Boeing Service Letter, 737–SL–27–112–B, dated February 6, 1997, which lists serial numbers of certain PCU's of the main rudder that have been identified as those having incorrect bolts. The service letter describes procedures for removal of those PCU's from the airplanes, and a one-time visual inspection to detect cracking of the lever assembly bearing with a 10-power magnification and strong light, a one-time eddy current inspection, and repair, if necessary, before the PCU can be reinstalled on the airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to prevent cracking of the bearing of the main rudder power control unit (PCU) due to the installation of an incorrect bolt; such cracking could result in seizure of the bearing and a consequent uncommanded rudder movement. This AD requires removal of the PCU and replacement with a serviceable unit. This AD also prohibits installation of a subject PCU on any airplane in the future unless the PCU has been inspected (visually and by eddy current) to detect cracking, repaired (if necessary), and tested. The actions are required to be accomplished in accordance with the service letter described previously.

This AD also requires that operators submit a report to the FAA of the inspection results whenever a PCU is inspected for cracking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–26–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–05–10 Boeing: Amendment 39–9954. Docket 97–NM–26–AD.

Applicability: Model 737 series airplanes, having a main rudder power control unit (PCU) that is identified in Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and seizing of the internal summing lever assembly bearing of the main rudder power control unit (PCU), which could result in uncommanded rudder movement, accomplish the following:

(a) Within 90 days after the effective date of this AD, remove the main rudder PCU and replace it with a serviceable unit in accordance with Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997.

(b) As of 90 days after the effective date of this AD, no person shall install on any airplane a main rudder PCU having a serial number specified in Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997, unless the following actions have been accomplished in accordance with Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997.

(1) Remove the internal summing lever assembly of the main rudder PCU in accordance with the service letter.

(2) Perform a one-time visual inspection using 10-power magnification and strong light to detect cracking of the bearing, in accordance with the service letter.

(i) If no cracking is detected during the visual inspection, perform an eddy current inspection to detect cracking of the bearing in accordance with the service letter.

(A) If no cracking is detected during the eddy current inspection, the unit may be reinstalled on the airplane after it is reassembled and tested in accordance with the service letter.

(B) If any cracking is detected during the eddy current inspection, before reinstallation of the PCU on any airplane, repair the lever assembly, reassemble, and test; in accordance with the service letter.

(ii) If any cracking is detected during the visual inspection, before reinstallation of the PCU on any airplane, repair the lever assembly, reassemble, and test, in accordance with the service letter.

(c) Within 14 days after accomplishing the requirements of paragraph (b) of this AD, submit a report of any cracked PCU bearing to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; fax (206) 227–1181. The report shall include the information specified in paragraphs (c)(1) and (c)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The PCU part number and serial number.

(2) The date of the inspection and the inspection findings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Service Letter 737–SL–27–112–B, dated February 6, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 19, 1997.

Issued in Renton, Washington, on February 25, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5159 Filed 2–28–97; 12:40 pm]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 97–AAL–2]

Amendment to Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the effective date and an error in the geographic coordinates of a final rule that was published in the Federal Register on January 6, 1997 (62 FR 608), Airspace Docket 96–AAL–32.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; e-mail: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–175, Airspace Docket 96–AAL–32, published on January 6, 1997, (62 FR 608), revised the Class E airspace area at Buckland, AK. The effective date for Airspace Docket 96–AAL–32 and the geographic coordinates for AKUDY are in error. This action corrects these errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date for the Airspace Docket 96–AAL–32 and the geographic coordinates listed for AKUDY as published in the Federal Register on January 6, 1997 (62 FR 608), (Federal Register Document 97–175, page 608), is corrected as follows:

* * * * *

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

* * * * *

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Buckland, AK [Corrected]

By removing ''(lat. 66°04′23″ N, long. 161°30′08″ W)'' and substituting ''(lat. 66°04′23″ N, long. 161°30′09″ W).''

* * * * *

Issued in Anchorage, AK on February 25, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–5293 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–13–P–M

14 CFR Part 97

[Docket No. 28818; Amdt. No. 1785]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center

(FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on February 21, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/06/97	IA	Vinton	Vinton Veterans Memorial Airpark	FDC 7/0730	NDB OR GPS RWY 27, AMDT 3...
02/07/97	AK	Wrangell	Wrangell	FDC 7/0736	LDA/DME–D AMDT 6A...
02/07/97	AK	Wrangell	Wrangell	FDC 7/0737	LDA/DME–C AMDT 7A...
02/07/97	CO	Grand Junction	Grand Junction/Walker Field	FDC 7/0769	VOR OR GPS RWY 11, AMDT 1...
02/07/97	IA	Des Moines	Des Moines Intl	FDC 7/0760	NDB OR GPS RWY 31R, AMDT 18...
02/07/97	MO	Kansas City	Richards-Gebaur Memorial	FDC 7/0756	GPS RWY 1 ORIG...
02/07/97	MO	Kansas City	Richards-Gebaur Memorial	FDC 7/0757	ILS RWY 1 AMDT 4A...
02/10/97	GA	Waycross	Waycross-Ware County	FDC 7/0797	ILS RWY 18 ORIG–A... Correction to TL97–05
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02/13/97	MN	Eveleth	Eveleth-Virginia Muni	FDC 7/0857	GPS RWY 27 AMDT 1...
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02/13/97	WI	Green Bay	Austin Straubel Intl	FDC 7/0850	ILS RWY 36 AMDT 6...
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02/18/97	TX	Athens	Athens Muni	FDC 7/0919	NDB RWY 35, AMDT 4...
02/18/97	TX	Gilmer	Gilmer-Upshur County	FDC 7/0908	VOR/DME–A, AMDT 1...
02/18/97	TX	Gladewater	Gladewater Muni	FDC 7/0918	VOR/DME OR GPS RWY 13, AMDT 2...
02/18/97	TX	Henderson	Rusk County	FDC 7/0915	VOR/DME OR GPS–A, AMDT 3...
02/18/97	TX	Henderson	Rusk County	FDC 7/0916	GPS RWY 16, ORIG...
02/18/97	TX	Henderson	Rusk County	FDC 7/0917	NDB–B, ORIG...
02/18/97	TX	Marshall	Harrison County	FDC 7/0912	GPS RWY 33, ORIG...
02/18/97	TX	Marshall	Harrison County	FDC 7/0913	VOR/DME–A, AMDT 4A...
02/18/97	TX	Marshall	Harrison County	FDC 7/0914	RNAV RWY 33, AMDT 1...
02/18/97	TX	Mineola-Quitman	Mineola-Quitman	FDC 7/0909	VOR/DME OR GPS–B, AMDT 1...
02/18/97	TX	Mineola-Quitman	Mineola-Quitman	FDC 7/0933	RNAV OR GPS RWY 18, AMDT 1...
02/18/97	TX	Mineola	Mineola Wisener Field	FDC 7/0907	VOR/DME–A, AMDT 3A...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0920	GPS RWY 31, ORIG...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0921	VOR/DME OR GPS RWY 4, AMDT 3...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0924	VOR/DME OR GPS RWY, AMDT 3...

FDC date	State	City	Airport	FDC No.	SIAP
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0926	NDB OR GPS RWY 13, AMDT 17...
02/18/97	TX	Tyler	Tyler Pounds Field	FDC 7/0927	ILS RWY 13, AMDT 20...
02/18/97	TX	Winnsboro	Winnsboro Muni	FDC 7/0911	VOR–A, AMDT 4...
02/19/97	NC	Wilson	Wilson Industrial Air Center	FDC 7/0956	NDB OR GPS RWY 21 AMDT 1...
02/19/97	NH	Portsmouth	Pease Intl Tradeport	FDC 7/0953	VOR OR TACAN OR GPS RWY 34 ORIG...

[FR Doc. 97–5290 Filed 3–3–97; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28817; Amdt. No. 1784]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on February 21, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective March 27, 1997*

San Luis Obispo, CA, San Luis Obispo County-McChesney Field, LOC RWY 11, Amdt 4, CANCELLED
San Luis Obispo, CA, San Luis Obispo County-McChesney Field, ILS RWY 11, Orig
Boyne Falls, MI, Boyne Mountain, NDB–C, Orig, CANCELLED
Gwinn, MI, Sawyer, VOR/DME–A, Orig
Richmond, VA, Richmond International, ILS RWY 34, Amdt 13

* * * *Effective April 24, 1997*

Washington, DC, Washington Dulles Intl, ILS/DME RWY 1L, Amdt 5
Baltimore, MD, Martin State, VOR/DME RNAV RWY 15, Amdt 5
Perkasie, PA, Pennridge, VOR RWY 8, Amdt 2
Rutland, VT, Rutland State, LDA 1 RWY 19, Amdt 8

* * * *Effective May 22, 1997*

Talkeetna, AK, Talkeetna, GPS RWY 36 Orig
El Dorado, AR, South Arkansas Regional at Goodwin Field, GPS RWY 22, Orig
Vacaville, CA, Nut Tree, GPS RWY 20, Amdt 1
Sterling, CO, Sterling Muni, GPS RWY 33, Orig
Melbourne, FL, Melbourne International, NDB OR GPS RWY 9R, Amdt 14
Melbourne, FL, Melbourne International, ILS RWY 9R, Amdt 10
Orlando, FL, Orlando Executive, LORAN RNAV RWY 7, Amdt 1, CANCELLED
Orlando, FL, Orlando Executive, LORAN RNAV RWY 25, Amdt 2, CANCELLED
Alexandria, LA, Alexandria International, GPS RWY 18, Orig
Endicott, NY, Tri-Cities, GPS RWY 21, Orig
Endicott, NY, Tri-Cities, VOR OR GPS–A, Amdt 4
Lincolnton, NC, Lincoln County, NDB or GPS RWY 23, Amdt 2
Blackwell, OK, Blackwell-Tonkawa Muni, VOR/DME RNAV RWY 17, Amdt 2, CANCELLED
Blackwell, OK, Blackwell-Tonkawa Muni, GPS RWY 17, Orig
Blackwell, OK, Blackwell-Tonkawa Muni, GPS RWY 35, Orig
Fairview, OK, Fairview Muni, GPS RWY 17, Orig
Oklahoma City, OK, Clarence E Page Muni, GPS RWY 17R, Orig
Oklahoma City, OK, Clarence E Page Muni, GPS RWY 35L, Orig
Prague, OK, Prague Muni, GPS RWY 17, Orig
La Grande, OR, La Grande/Union County, GPS RWY 16, Orig
Allentown, PA, Lehigh Valley Intl, LOC BC RWY 24, Amdt 20
Altoona, PA, Altoona-Blair County, ILS RWY 20, Amdt 5
Titusville, PA, Titusville, VOR OR GPS–A, Amdt 5
Columbia, SC, Columbia Owens Downtown, GPS RWY 31, Orig
Lufkin, TX, Angelina County, GPS RWY 7, Orig
Lufkin, TX, Angelina County, GPS RWY 15, Orig
Lufkin, TX, Angelina County, GPS RWY 33, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 18, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 33, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 36, Orig
Logan, UT, Logan-Cache, GPS RWY 35, Orig
Manitowish, WI, Manitowish Waters, GPS RWY 32, Orig
Necedah, WI, Necedah, GPS RWY 36, Orig
Necedah, WI, Necedah, NDB RWY 36, Amdt 1

Effective Upon Publication

Bremerton, WA, Bremerton National, ILS RWY 19, Amdt 12

[FR Doc. 97–5289 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 94N–0247]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Monograph for OTC Bronchodilator Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final monograph for over-the-counter (OTC) bronchodilator drug products that appeared in the Federal Register of May 20, 1996 (61 FR 25142). The document amended the final monograph for OTC bronchodilator drug products by removing pressurized metered-dose aerosol container dosage forms for the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. The document was published with an inadvertent error in one of the amendatory instructions. This document corrects that error.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 96–12499, appearing on page 25142 in the Federal Register of Monday, May 20, 1996, the following correction is made: On page 25146, in the 3d column, amendatory instruction 4 is corrected to read as follows:

4. Section 341.76 is amended by removing the heading for paragraph (d)(2), and paragraphs (d)(2)(i) and (e), by redesignating paragraph (d)(2)(ii) as paragraph (d)(2), and by revising the heading of newly redesignated paragraph (d)(2) to read as follows:

Dated: February 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5210 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending its rules that govern compliance proceedings to clarify that Regional Directors have authority, in appropriate circumstances, to issue a compliance specification at any stage during the pendency of an unfair labor practice proceeding. The amendments are being adopted in order to resolve any possible ambiguity that may exist with respect to this authority. The intended effect of the revisions is to avoid needless challenges to this procedure.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W. Room 11600, Washington, D.C. 20570–0001, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: Section 102.54 of the National Labor Relations Board's Rules and Regulations, 29 CFR 102.54, sets forth procedures for the initiation of formal compliance proceedings and for the issuance of a compliance specification and notice of hearing. Although compliance specifications ordinarily are issued to resolve disputes that arise with respect to an outstanding Board order, there have been circumstances in which it was considered appropriate to issue a compliance specification in advance of a Board order. Section 102.54(b) presently provides that such a compliance specification may be consolidated with an outstanding complaint and notice of hearing issued pursuant to § 102.15, 29 CFR 102.15.

Section 102.54(b) never was intended to imply that a compliance specification could only be issued in advance of a Board order when it was to be consolidated with proceedings on an outstanding complaint. For, there may be other circumstances in which it is appropriate to issue a compliance specification in advance of a Board order. This could occur, for example, where the compliance specification is issued to plead a specific amount in controversy in some collateral proceeding in which the Board is seeking prejudgment relief to avoid dissipation of assets before a Board order can issue.

There have been instances in which respondents have interposed in collateral litigation the argument that the Board's rules, as drafted, preclude the agency from issuing a compliance specification in advance of a Board order without consolidating it with the related complaint and notice of hearing. Although we are not aware of any case in which this argument has prevailed, the Board considers it prudent to clarify the rule to avoid litigation over this issue in the future.

Accordingly, a new paragraph (b) of § 102.54 is being added to reflect that a compliance specification may issue based on an outstanding complaint whenever the Regional Director deems it necessary to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay. Current paragraph (b) of § 102.54 is being redesignated paragraph (c). In all other respects, § 102.54 remains unchanged.

Regulatory Requirements

This rule relates solely to agency organization, procedure and practice, and will not have a significant economic impact on a substantial number of small businesses or impose any information collection requirements. Accordingly, the Agency finds that prior notice and comment is not required for these rules and that good cause exists for waiving the general requirement of delaying the effective date under the Administrative Procedure Act (5 U.S.C. 553), and that the rules are not subject to the Regulatory Flexibility Act (5 U.S.C. 601), Small Business Regulatory Enforcement Act (5 U.S.C. 801), Paperwork Reduction Act (44 U.S.C. 3501), or Executive Order 12866.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

29 CFR part 102 is amended as follows:

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. In section 102.54, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 102.54 Initiation of formal compliance proceedings; issuance of compliance specification and notice of hearing.

* * * * *

(b) Whenever the Regional Director deems it necessary in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay, the Regional Director may issue a compliance specification, with or without a notice of hearing, based on an outstanding complaint.

* * * * *

Dated, Washington, DC, February 27, 1997.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 97–5283 Filed 3–3–97; 8:45 am]

BILLING CODE 7545–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7208]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not

listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modifications	Community No.
Arizona: Maricopa.	Town of Cave Creek.	Dec. 16, 1996, Dec. 23, 1996, *Arizona Republic*.	The Honorable Tom Augerton, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.	Nov. 27, 1996 ...	040129
Arizona: Maricopa.	City of Phoenix	Jan. 24, 1997, Jan. 31, 1997, *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003–1611.	Dec. 19, 1996 ...	040051
Arizona: Maricopa.	City of Phoenix	Jan. 7, 1997, Jan. 14, 1997, *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003–1611.	Dec. 6, 1996	040051
Arkansas: St. Francis.	City of Forrest City.	Jan. 24, 1997, Jan. 31, 1997, *Forrest City Times-Herald*.	The Honorable Danny Ferguson, Mayor, City of Forrest City, P.O. Box 1074, Forrest City, Arkansas 72335.	Jan. 3, 1997	050187
Arkansas: Benton.	City of Rogers ..	Dec. 16, 1996, Dec. 23, 1996, *Benton County Daily Record*.	The Honorable John W. Sampier, Jr., Mayor, City of Rogers, 300 West Poplar, Record Rogers, Arkansas 72756.	Dec. 3, 1996	050013
Arkansas: White	City of Searcy ...	Jan. 24, 1997, Jan. 31, 1997, *Daily Citizen*.	The Honorable David Evans, Mayor, City of Searcy, 401 West Arch Avenue, Searcy, Arkansas 77143–5392.	Dec. 20, 1996 ...	050229
California: Ventura.	City of Camarillo	Jan. 22, 1997, Jan. 29, 1997, *Ventura County Star*.	The Honorable David Smith, Mayor, City of Camarillo, P.O. Box 248, Camarillo, California 93011.	Jan. 2, 1997	065020
California: Orange.	City of Fullerton	Jan. 23, 1997, Jan. 30, 1997, *Fullerton News-Tribune*.	The Honorable Chris Norby, Mayor, City of Fullerton, 303 West Commonwealth Avenue, Fullerton, California 92832.	Jan. 6, 1997	060219
California: San Luis Obispo.	City of Grover Beach.	Dec. 12, 1996, Dec. 19, 1996, *Telegram-Tribune*.	The Honorable Ronald Arnoldsen, Mayor, City of Grover Beach, P.O. Box 365, Grover Beach, California 93483.	Nov. 25, 1996 ...	060306
California: Sonoma.	City of Petaluma	Jan. 10, 1997, Jan. 17, 1997, *Press Democrat*.	The Honorable M. Patricia Hilligoss, Mayor, City of Petaluma, P.O. Box 61, Petaluma, California 94953.	Dec. 4, 1996	060379
California: San Luis Obispo.	City of Pismo Beach.	Dec. 12, 1996, Dec. 19, 1996, *Telegram-Tribune*.	The Honorable John Brown, Mayor, City of Pismo Beach, P.O. Box 3, Pismo Beach, California 93449.	Nov. 25, 1996 ...	060309

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modifications	Community No.
California: Riverside.	Unincorporated Areas.	Dec. 16, 1996, Dec. 23, 1996, *The Press-Enterprise*.	The Honorable Kay Ceniceros, Chairperson, Riverside County, Board of Supervisors, P.O. Box 1486, Riverside, California 92502–1486.	Nov. 27, 1996 ...	060245
California: Sacramento.	Unincorporated Areas.	Jan. 22, 1997, Jan. 29, 1997, *Sacramento Bee*.	Mr. Douglas M. Fraleigh, Administrator, Sacramento County Public Works Agency, County Administration Building, 827 Seventh Street, Room 304, Sacramento, California 95814.	Dec. 30, 1996 ...	060262
Colorado: Denver.	City and County of Denver.	Jan. 23, 1997, Jan. 30, 1997, *The Denver Post*.	The Honorable Wellington E. Webb, Mayor, City and County of Denver, 1437 Bannock Street, Denver, Colorado 80202.	Jan. 8, 1997	080046
Nevada: Clark ...	Unincorporated Areas.	Dec. 16, 1996, Dec. 23, 1996, *Las Vegas Review Journal*.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Commissioners, 225 East Bridger Avenue, Las Vegas, Nevada 89155.	Nov. 21, 1996 ...	320003
New Mexico: Bernalillo.	City of Albuquerque.	Jan. 24, 1997, Jan. 31, 1997, *Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	Jan. 6, 1997	350002
New Mexico: Bernalillo.	Unincorporated Areas.	Jan. 24, 1997, Jan. 31, 1997, *Albuquerque Journal*.	The Honorable Albert Valdez, Chairman, County Commissioners, Bernalillo County, One Civic Plaza, Northwest, Tenth Floor, Albuquerque, New Mexico 87102.	Jan. 6, 1997	350001
Texas: Harris	City of Baytown	Dec. 11, 1996, Dec. 18, 1996, *Baytown Sun*.	The Honorable Pete Alfaro, Mayor, City of Baytown, City Hall, 2401 Market Street Baytown, Texas 77522.	Nov. 19, 1996 ...	485456
Texas: Dallas	City of Dallas	Dec. 18, 1996, Dec. 24, 1996, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201.	Nov. 27, 1996 ...	480171
Texas: Dallas	City of Farmers Branch.	Dec. 18, 1996, Dec. 24, 1996, *Dallas Morning News*.	The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010.	Nov. 27, 1996 ...	480174
Texas: Tarrant ..	City of Haltom City.	Dec. 16, 1996, Dec. 23, 1996, *Fort Worth Star-Telegram*.	The Honorable Charles Womack, Mayor, City of Haltom City, P.O. Box 14246, Haltom City, Texas 76117.	Dec. 3, 1996	480599
Texas: Harris	Unincorporated Areas.	Dec. 13, 1996, Dec. 20, 1996, *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	Nov. 25, 1996 ...	480287
Texas: Harris	Unincorporated Areas.	Dec. 11, 1996, Dec. 18, 1996, *Baytown Sun*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	Nov. 19, 1996 ...	480287
Texas: Montgomery.	Unincorporated Areas.	Dec. 13, 1996, Dec. 20, 1996, *Houston Chronicle*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Nov. 25, 1996 ...	480483
Texas: Tarrant ..	City of North Richland Hills.	Jan. 24, 1997, Jan. 31, 1997, *Fort Worth Star-Telegram*.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	Dec. 23, 1996 ...	480607
Texas: Tarrant ..	City of North Richland Hills.	Dec. 16, 1996, Dec. 23, 1996, *Fort Worth Star-Telegram*.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	Dec. 3, 1996	480607
Texas: Williamson.	City of Round Rock.	Dec. 5, 1996, Dec. 12, 1996, *Round Rock Leader*.	The Honorable Charles Culpepper, Mayor, City of Round Rock, 221 East Main, Round Rock, Texas 78664.	Nov. 12, 1996 ...	481048
Texas: Williamson.	Unincorporated Areas.	Dec. 5, 1996, Dec. 12, 1996, *Round Rock Leader*.	The Honorable John Doerfler, Williamson County Judge, County Courthouse, 710 Main Street, Suite 201, Georgetown, Texas 78626.	Nov. 12, 1996 ...	481079
Washington: Spokane.	Unincorporated Areas.	Dec. 11, 1996, Dec. 18, 1996, *The Spokesman-Review*.	The Honorable Jim Lindow, Chief Executive Officer, Spokane County, 1116 West Broadway, Spokane, Washington 99260.	Nov. 26, 1996 ...	530174

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5272 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s)

in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7200).	Unincorporated Areas	Sept. 18, 1996; Sept. 25, 1996; *Arizona Daily Star*.	The Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress, Tucson, Arizona 85701.	Aug. 13, 1996	040073
California: San Diego (FEMA Docket No. 7200).	Unincorporated Areas	Oct. 1, 1996; Oct. 8, 1996; *San Diego Daily Transcript*.	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors,1600 Pacific Highway, Room 335, San Diego, California 92101.	Sept. 16, 1996	060284
Colorado: Jefferson (FEMA Docket No. 7200).	City of Golden	Sept. 6, 1996; Sept. 13, 1996; *Golden Transcript*.	The Honorable Jan C. Schenck, Mayor, City of Golden, City Hall, 911 Tenth Street, Golden, Colorado 80401.	Aug. 20, 1996	080090

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Boulder (FEMA Docket No. 7200).	City of Louisville	Sept. 18, 1995; Sept. 25, 1995; *Louisville Times*.	The Honorable Tom Davidson, Mayor, City of Louisville, 749 Main Street, Louisville, Colorado 80027.	Sept. 6, 1996.	085076
Colorado: Boulder (FEMA Docket No. 7200).	Unincorporated Areas	Sept. 18, 1996; Sept. 25, 1996; *Louisville Times*.	The Honorable Ronald K. Stewart, Chairman, Board of County Commissioners, Boulder County, P.O. Box 471, Boulder, Colorado 80306.	Sept. 6, 1996	080023
Colorado: Jefferson (FEMA Docket No. 7200).	City of Wheat Ridge	Sept. 20, 1996; Sept. 27, 1996; *Wheat Ridge Transcript*.	The Honorable Dan Wilde, Mayor, City of Wheat Ridge, 7500 West 29th Avenue, Wheat Ridge, Colorado 80215.	Aug. 28, 1996	085079
Kansas: Harvey (FEMA Docket No. 7200).	City of Halstead	Oct. 3, 1996; Oct. 10, 1996; *The Harvey County Independent*.	The Honorable Dorel Neufeld, Mayor, City of Halstead, P.O. Box 312, Halstead, Kansas 67056–0312.	Sept. 4, 1996	200131
Kansas: Harvey (FEMA Docket No. 7200).	Unincorporated Areas	Oct. 3, 1996; Oct. 10, 1996; *The Harvey County Independent*.	The Honorable Craig R. Simons, Harvey County Administrator, Administration Department, P.O. Box 687, Newton, Kansas 67114–0687.	Sept. 4, 1996	200585
Oklahoma: Comanche (FEMA Docket No. 7200).	City of Lawton	Oct. 1, 1996; Oct. 8, 1996; *The Lawton Constitution*.	The Honorable John T. Marley, Mayor, City of Lawton, 103 Southwest Fourth Street, Lawton, Oklahoma 73501.	Aug. 30, 1996	400049
Oklahoma: Ottawa (FEMA Docket No. 7200).	City of Miami	Sept. 18, 1996; Sept. 25, 1996; *Miami News Record*.	The Honorable Louis E. Mathia, Mayor, City of Miami, P.O. Box 309, Miami, Oklahoma 74355–0309.	Aug. 16, 1996	400157
Oregon: Jackson (FEMA Docket No. 7200).	City of Medford	Sept. 5, 1996; Sept. 12, 1996; *Mail Tribune*.	The Honorable Jerry Lausmann, Mayor, City of Medford, 411 West Eighth Street, Medford, Oregon 97501.	Aug. 2, 1996	410096
Texas: Harris (FEMA Docket No. 7200).	Unincorporated Areas	Sept. 18, 1996; Sept. 25, 1996; *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, Harris County Administration Building, 1001 Preston Street, Houston, Texas 77002.	Aug. 16, 1996	480287
Texas: Tarrant (FEMA Docket No. 7200).	City of Haslet	Sept. 20, 1996; Sept. 27, 1996; *Fort Worth Star-Telegram*.	The Honorable I. J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	Aug. 29, 1996	480600
Texas: Denton (FEMA Docket No. 7200).	Town of Hebron	Sept. 11, 1996; Sept. 18, 1996; *Lewisville Leader*.	The Honorable Stanley Dozier, Mayor, Town of Hebron, Route 2, Box 184, Carrollton, Texas 75010.	Aug. 20, 1996	481495
Texas: Montgomery (FEMA Docket No. 7200).	Unincorporated Areas	Oct. 1, 1996; Oct. 8, 1996; *Conroe Courier*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Sept. 12, 1996	480483
Texas: Collin (FEMA Docket No. 7200).	City of Plano	Oct. 8, 1996; Oct. 15, 1996; *Plano Star Courier*.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Sept. 11, 1996	480140

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Collin (FEMA Docket No. 7200).	City of Plano	Oct. 9, 1996; Oct. 16, 1996; *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Sept. 12, 1996	480140
Texas: Wichita (FEMA Docket No. 7200).	City of Wichita Falls	Oct. 3, 1996; Oct. 10, 1996; *Wichita Falls Times Record News.*	The Honorable Kay Yeager, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307.	Sept. 24, 1996	480662

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5271 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq. Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
ARIZONA	
Graham County (Unincorporated Areas) (FEMA Docket No. 7198)	
Gila River:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
At downstream limit of detailed study (approximately 4,300 feet downstream of Eighth Avenue)	*2,888
At upstream limit of detailed study	*2,938
Maps are available for inspection at the Graham County Planning and Zoning Department, 800 Main Street, Safford, Arizona.	
Safford (City), Graham County (FEMA Docket No. 7198)	
Gila River:	
Approximately 100 feet upstream of First Avenue	*2,909
At upstream corporate limits	*2,916
Maps are available for inspection at the City of Safford Department of Public Works, 717 Main Street, Safford, Arizona.	
ARKANSAS	
Franklin County and Incorporated Areas (FEMA Docket No. 7198)	
Arkansas River:	
At Franklin-Johnson County Line	*360
At Franklin-Crawford County Line	*388
Mulberry River:	
Approximately 2.2 miles downstream of State Highway 23	*686
Approximately 3.1 miles upstream of State Highway 23	*741
Fane Creek:	
At confluence with Mulberry River	*723
Approximately 0.4 mile upstream of State Highway 23	*758
Maps are available for inspection at the Franklin County Courthouse, 211 West Commercial, Ozark, Arkansas.	
Maps are available for inspection at the City of Ozark City Hall, 607 College Street, Ozark, Arkansas.	
CALIFORNIA	
Jackson (City), Amador County (FEMA Docket No. 7198)	
North Fork Jackson Creek:	
Approximately 200 feet upstream of Stark Lane	*1,269
Approximately 930 feet upstream of Jackson Gate Road	*1,316
Oneida Creek:	
At confluence with North Fork Jackson Creek	*1,296
Approximately 1,820 feet upstream of confluence	*1,334
New York Ranch Creek:	
Approximately 150 feet downstream of Court Street	*1,215
Approximately 1,340 feet upstream of Rollingwood Drive	*1,341
Placer Drive:	
At storm drain inlet approximately 1,520 feet upstream of confluence with New York Ranch Creek	*1,248
Approximately 2,000 feet upstream of confluence	*1,255
Maps are available for inspection at the City of Jackson City Hall, 33 Broadway, Jackson, California.	
Amador County (Unincorporated Areas) (FEMA Docket No. 7198)	
Sutter Creek:	
Just upstream of Sutter Creek Road	*1,250
Approximately 5 miles upstream of Sutter Creek Road	*1,452
North Fork Jackson Creek:	
Approximately 850 feet upstream of Stark Lane	*1,278
Approximately 50 feet upstream of Jackson Gate Road	*1,300
Approximately 940 feet upstream of Jackson Gate Road	*1,316
Oneida Creek:	
Approximately 1,340 feet upstream of confluence with North Fork Jackson Creek	*1,318
South Fork Jackson Creek:	
Approximately 3,150 feet upstream of Broadway	*1,249
Maps are available for inspection at the Amador County Department of Planning, Administrative Center, 500 Argonaut Lane, Jackson, California.	
Carlsbad (City), San Diego County (FEMA Docket No. 7146)	
Agua Hedionda Creek:	
Approximately 1,400 feet downstream of El Camino Real Drive	*32
Approximately 1,400 feet downstream of El Camino Real (right levee removed)	*30
Approximately 1,400 feet downstream of El Camino Real (left bank flow)	*37
Approximately 100 feet upstream of Rancho Carlsbad (upstream crossing)	*61
Approximately 100 feet upstream of an unnamed road (approximately 8,200 feet upstream of El Camino Real)	*102
Calavera Creek:	
At confluence with Agua Hedionda Creek (south side of floodwall)	*48
At confluence with Agua Hedionda Creek (north side of floodwall)	*39
Just upstream of the floodwall	*61
Approximately 700 feet upstream of confluence with Calavera Creek Splitflow	*74
Calavera Creek Splitflow:	
Approximately 700 feet upstream of confluence with Calavera Creek	*73
Maps are available for inspection at the City of Carlsbad Engineering Department, 2075 Las Palmas Drive, Carlsbad, California.	
Chula Vista (City), San Diego County (FEMA Docket No. 7146)	
Poggi Canyon Creek:	
Approximately 2,200 feet upstream of Oleander Avenue	*207
Approximately 2,500 feet upstream of Oleander Avenue	*212
Telegraph Canyon Creek:	
170 feet upstream of Telegraph Canyon Road	*344
50 feet downstream of Otay Lakes Road	*451
3,540 feet upstream of Otay Lakes Road	*499
Maps are available for inspection at the City of Chula Vista City Hall, 276 Fourth Avenue, Chula Vista, California.	
El Cajon (City), San Diego County (FEMA Docket No. 7146)	
Forester Creek:	
Approximately 110 feet below Terra Lane	*541
At Terra Lane	*542
Approximately 65 feet upstream of Terra Lane at corporate limits	*542
Maps are available for inspection at the City of El Cajon Department of Public Works, 200 East Main Street, El Cajon, California.	
Escondido (City), San Diego County (FEMA Docket No. 7146)	
Maywood Wash:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
50 feet east of intersection of La Honda Drive and Dippon Lane	#1
Kit Carson Park Creek:	
1,200 feet downstream of Via Rancho Parkway (at Lake Hodges)	*326
Maps are available for inspection at the City of Escondido Public Works Department, 201 North Broadway, Escondido, California.	
Escondido (City), San Diego County (FEMA Docket No. 7146)	
Reidy Creek:	
Approximately 19,000 feet upstream of confluence with Escondido Creek	*740
Just upstream of the North Broadway Avenue Bridge	*753
Approximately 20,500 feet upstream of confluence with Escondido Creek	*754
Approximately 22,050 feet upstream of confluence with Escondido Creek	*767
Approximately 22,550 feet upstream of confluence with Escondido Creek	*770
Maps are available for inspection at the City of Escondido Public Works Department, 201 North Broadway, Escondido, California.	
Mountain View (City), Santa Clara County (FEMA Docket No. 7188)	
Permanente Creek:	
Approximately 1,400 feet downstream of Shoreline Parkway	*8
Approximately 1,100 feet upstream of Shoreline Parkway	*9
At U.S. Route 101 (Bayshore Freeway)	*14
Permanente Creek-East Overbank:	
Just downstream of Amphitheater Parkway	*8
Approximately 850 feet upstream of Amphitheater Parkway	*9
Permanente Creek-West Overbank:	
Approximately 500 feet downstream of Amphitheater Parkway	*8
Approximately 850 feet upstream of Amphitheater Parkway	*9
Maps are available for inspection at the City of Mountain View Department of Public Works, 500 Castro Street, Mountain View, California.	
Oceanside (City), San Diego County (FEMA Docket No. 7146)	
Pilgrim Creek:	
Approximately 2,300 feet downstream of confluence with Windmill Canyon	*52
Approximately 1,600 feet upstream of confluence with Windmill Canyon	*56
Approximately 3,600 feet upstream of confluence with Windmill Canyon	*57
Maps are available for inspection at the City of Oceanside Engineering Department, 300 North Hill Street, Oceanside, California.	
Orinda (City), Contra Costa County (FEMA Docket No. 7198)	
Orinda Village Overflow from San Pablo Creek:	
Approximately 150 feet downstream of Orinda Way	*402
Just upstream of Orinda Way	*412
Approximately 600 feet upstream of Camino Sobrante	*430
San Pablo Creek (Reach 1):	
Approximately 500 feet upstream of Camino Sobrante	*432
Approximately 800 feet upstream of confluence with Overhill Creek	*479
San Pablo Creek (Reach 2):	
Approximately 150 feet downstream of Brookside Road	*527
Just upstream of Brookside Road	*538
Just upstream of Greenwood Court	*731
Brookside Road Tributary:	
At confluence with San Pablo Creek	*522
Approximately 1,500 feet upstream of Brookside Road	*591
Maps are available for inspection at the City of Orinda Department of Planning, City Hall, 26 Orinda Way, Orinda, California.	
San Diego (City), San Diego County (FEMA Docket No. 7146)	
Lusardi Creek:	
Approximately 4,200 feet upstream of confluence with San Diequito River	*122
Approximately 5,500 feet upstream of confluence with San Diequito River	*134
Maps are available for inspection at the City of San Diego Engineering Department, 202 C Street, San Diego, California.	
San Diego (City), San Diego County (FEMA Docket No. 7146)	
Beeler Creek:	
1,200 feet downstream of Old Pomerado Road	*446
500 feet downstream of Old Pomerado Road	*457
Approximately 1.6 miles upstream of Pomerado Road	*604
Approximately 2.1 miles upstream of Pomerado Road	*636
Carroll Canyon Creek:	
950 feet upstream of Willow Creek Road	*523
Approximately 2,500 feet downstream of Avenida Magnifica	*559
Rose Canyon Creek:	
450 feet downstream of Balboa Avenue	*13
200 feet downstream of Mission Bay Drive	*17
1,350 feet upstream of Interstate Highway 805	*261
1,800 feet upstream of Interstate Highway 805	*265
Soledad Canyon:	
Upstream side of North Torrey Pines Road	*11
2,000 feet upstream of North Torrey Pines Road	*12
Maps are available for inspection at the City of San Diego City Hall, 202 C Street, San Diego, California.	
San Diego County (Unincorporated Areas) (FEMA Docket No. 7146)	
Witch Creek:	
Approximately 7,700 feet upstream of confluence with Santa Ysabel Creek	*2,487
Approximately 11,360 feet upstream of confluence with Santa Ysabel Creek	*2,566
Approximately 11,900 feet upstream of confluence with Santa Ysabel Creek	*2,723
Approximately 18,100 feet upstream of confluence with Santa Ysabel Creek	*2,782
Rainbow Creek:	
Approximately 100 feet downstream of Old Highway 395	*1,028
At Fifth Street	*1,036
At Huffstatler Street	*1,044

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
At Rainbow Valley Boulevard	*1,049
Approximately 4,225 feet upstream of Rainbow Valley Boulevard	*1,073
Rainbow Creek (West Branch):	
At confluence with Rainbow Creek	*1,044
At First Street	*1,058
Approximately 1,900 feet upstream of First Street	*1,070
Steele Canyon Creek:	
Approximately 480 feet upstream of confluence with Sweetwater River	*313
At Miller Ranch Road	*325
At Stony Oak Drive	*472
At Aurora Vista Road	*530
At Vista Sage Lane	*754
Approximately 2,300 feet upstream of Vista Sage Lane	*804
Eucalyptus Hills Creek (East Branch):	
Approximately 700 feet above confluence with San Diego River	*374
At Riverside Drive	*380
At Lakeside Avenue	*388
Approximately 2,630 feet upstream of Lakeside Avenue	*424
Eucalyptus Hills Creek (West Branch):	
Approximately 950 feet downstream of Riverside Drive	*374
At Riverside Drive	*374
Approximately 0.75 mile upstream of Riverside Drive	*423
Approximately 1.25 miles upstream of Riverside Drive	*519
Lusardi Creek:	
At confluence with the San Diequito River	*57
Approximately 3,000 feet upstream of confluence with the San Diequito River	*90
Approximately 5,500 feet upstream of confluence with the San Diequito River	*134
Beaver Hollow Creek:	
Approximately 2,700 feet upstream of confluence with the Sweetwater River	*1,076
Approximately 5,500 feet upstream of confluence with the Sweetwater River	*1,134
Approximately 9,900 feet upstream of confluence with the Sweetwater River	*1,273
Approximately 14,530 feet upstream of confluence with the Sweetwater River	*1,447
Tributary to Sweetwater River:	
Approximately 600 feet downstream of Easement Road	*128
At Proctor Valley Road	*147
At El Rancho Grande Road	*200
At San Miguel Road	*244
Approximately 1,350 feet upstream of San Miguel Road	*268
Buena Creek:	
Approximately 120 feet downstream of Buena Creek Road	*620
At Sugar Bush Drive	*642
At Hollyberry Drive	*662
Approximately 600 feet upstream of Hollyberry Drive	*674
Moosa Creek (North Branch):	
At unnamed road 1,600 feet downstream of Valley Vista Road	*1,409
At Valley Vista Road	*1,462
At Cool Water Ranch Road	*1,518
At Bates Nut Farm Road	*1,575
At Indian Hill Ranch Road	*1,596
At Lake Wohlford Road	*1,632
Just upstream of Canal Road	*1,658
Moosa Creek (South Branch):	
At confluence with Moosa Creek	*1,599
Approximately 990 feet downstream of Lake Wohlford Road	*1,613
Approximately 10 feet upstream of Lake Wohlford Road	*1,628
Gopher Canyon:	
Just downstream of Old River Road	*149
Approximately 2,400 feet upstream of Old River Road	*174
Approximately 4,700 feet upstream of Old River Road	*208
At Gopher Canyon Road	*253
Approximately 3,650 feet upstream of Gopher Canyon Road	*320
At Robbie Lane	*400
At Twin Oaks Valley Road	*453
Approximately 3,200 feet upstream of Twin Oaks Valley Road	*521
Escondido Creek:	
Approximately 660 feet downstream of North Lake Wohlford Road	*1,492
At Bear Valley Heights Road	*1,566
Approximately 1,800 feet upstream of Bear Valley Heights Road	*1,581
Pala Mesa Creek:	
Just downstream of Old Route 395	*311
At Canonita Drive	*384
Approximately 140 feet upstream of Valley Oaks Boulevard East	*442
Slaughterhouse Creek:	
Approximately 1,240 feet downstream of Route 67	*447
Just downstream of Slaughterhouse Canyon Road	*465
Approximately 1,680 feet upstream of Slaughterhouse Canyon Road	*490
Approximately 4,080 feet upstream of Slaughterhouse Canyon Road	*545
Forester Creek:	
Approximately 110 feet downstream of Terra Lane	*541
Approximately 1,000 feet upstream of Greenfield Road	*628
At Flume Drive	*659
Approximately 0.25 mile upstream of Forester Creek Road	*740
Approximately 3,110 feet upstream of Forester Creek Road	*900
Approximately 1 mile upstream of Forester Creek Road	*1,060
Approximately 7,530 feet upstream of Forester Creek Road	*1,178
Approximately 2 miles upstream of Forester Road	*1,280
Tributary to Forester Creek (South Branch):	
Approximately 1,150 feet downstream of Fourth Street	*518
Approximately 1,350 feet upstream of Fourth Street	*542
Approximately 2,950 feet upstream of Fourth Street	*562
Tributary to Forester Creek:	
Approximately 2,250 feet downstream of Third Street	*490
Approximately 100 feet upstream of Third Street	*506
Approximately 30 feet downstream of Fourth Street	*532
Approximately 2,330 feet upstream of Fourth Street	*562
Santa Ysabel Creek:	
Approximately 8,370 feet downstream of Route 79	*2,810
Just upstream of Route 79	*2,930
Approximately 2,930 feet upstream of Route 79	*2,993
Lawson Creek:	
Approximately 7,200 feet upstream of confluence with the Sweetwater River	*1,572
At Sloane Canyon Road	*1,636
Approximately 1,850 feet upstream of Sloane Canyon Road	*1,662
Approximately 3,630 feet upstream of Sloane Canyon Road	*1,752
Approximately 5,050 feet upstream of Sloane Canyon Road	*1,770
Approximately 1,970 feet downstream of Rudnick Road	*1,840
Approximately 730 feet downstream of Rudnick Road	*1,914
Approximately 70 feet upstream of Rudnick Road	*1,944
Approximately 1,510 feet upstream of Rudnick Road	*1,960
Coleman Creek:	
Approximately 1,860 feet downstream of Highway 78	*3,569
Approximately 400 feet upstream of Highway 78	*3,604

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 410 feet downstream of Calico Ranch Road	*3,620
Approximately 990 feet upstream of Calico Ranch Road	*3,660
Approximately 2,840 feet upstream of Calico Ranch Road	*3,740
Approximately 3,490 feet upstream of Calico Ranch Road	*3,780
Approximately 4,890 feet upstream of Calico Ranch Road	*3,869
Approximately 6,390 feet upstream of Calico Ranch Road	*3,914
Approximately 7,650 feet upstream of Calico Ranch Road	*3,941
Approximately 1.75 miles upstream of Calico Ranch Road	*3,974
Approximately 2 miles upstream of Calico Ranch Road	*4,012
Approximately 12,230 feet upstream of Calico Ranch Road	*4,044
Approximately 13,530 feet upstream of Calico Ranch Road	*4,164
Twin Oaks Valley Creek:	
Approximately 300 feet downstream of Olive Street	*694
Approximately 400 feet upstream of Olive Street	*700
At Deer Springs Road	*723
Approximately 100 feet downstream of Tres Encinas Road	*770
Approximately 2,420 feet upstream of Tres Encinas Road	*809
Deer Springs Creek:	
Approximately 75 feet downstream of Marilyn Lane	*723
Approximately 2,550 feet upstream of Marilyn Lane	*749
Approximately 3,965 feet upstream of Marilyn Lane	*774
Stevenson Creek:	
Approximately 900 feet downstream of Deer Springs Road	*730
At Vista Merriam Road	*766
Approximately 200 feet upstream of Country Garden Lane	*815
Olive Creek:	
At confluence with Twin Oaks Valley Creek	*699
Approximately 1,800 feet upstream of confluence with Twin Oaks Valley Creek	*715
Approximately 50 feet downstream of Kiso Lane	*724
Approximately 610 feet upstream of Kiso Lane	*738
Buena Creek:	
Just downstream of the Atchison, Topeka and Santa Fe Railroad	*443
Just upstream of the Atchison, Topeka and Santa Fe Railroad	*445
Approximately 300 feet upstream of the Atchison, Topeka and Santa Fe Railroad	*447
Reidy Creek:	
Approximately 20,650 feet from confluence with Escondido Creek	*756
Maps are available for inspection at the San Diego County Department of Public Works, Land Development Division, 5555 Overland Avenue, San Diego, California.	
San Diego County (Unincorporated Areas) (FEMA Docket No. 7146)	
Johnson Canyon Creek:	
800 feet upstream of confluence with Otay River	#1
920 feet upstream of confluence with Otay River	*229
4,500 feet upstream of confluence with Otay River	*307
14,030 feet upstream of confluence with Otay River	*511
San Luis Rey River:	
2,100 feet downstream of Old Highway 395 (Escondido Expressway)	0
Just downstream of Shearer Road	0
Maps are available for inspection at the San Diego County Department of Public Works, Land Development Division, 5555 Overland Avenue, San Diego, California.	
San Marcos (City), San Diego County (FEMA Docket No. 7146)	
Olive Creek:	
Approximately 600 feet upstream of confluence with Twin Oaks Valley Creek	*699
Approximately 815 feet upstream of confluence with Twin Oaks Valley Creek	*704
Approximately 1,415 feet upstream of confluence with Twin Oaks Valley Creek	*711
Twin Oaks Valley Creek:	
Approximately 900 feet downstream of Olive Street	*690
Approximately 400 feet upstream of Olive Street	*700
Approximately 200 feet upstream of Mulberry Drive	*716
At Deer Springs Road	*723
Maps are available for inspection at the City of San Marcos Engineering Services Department, One Civic Center Drive, San Marcos, California.	
Santee (City), San Diego County (FEMA Docket No. 7146)	
San Diego River:	
Approximately 1,800 feet downstream of Riverford Road	*354
Approximately 1,200 feet downstream of Riverford Road	*361
Maps are available for inspection at the City of Santee City Hall, 10601 Magnolia Avenue, Santee, California.	
Saratoga (City), Santa Clara County (FEMA Docket No. 7198)	
Calabazas Creek:	
Approximately 600 feet upstream of Prospect Road	*306
Just upstream of Wardell Road	*341
Prospect Creek:	
At confluence with Calabazas Creek	*315
Just downstream of Prospect Road	*351
Maps are available for inspection at 13777 Fruitvale Avenue, Saratoga, California.	
Sonoma County (Unincorporated Areas) (FEMA Docket No. 7198)	
Fryer Creek:	
Just upstream of Leveroni Road	*56
Approximately 0.5 mile upstream of Leveroni Road	*60
Maps are available for inspection at the Sonoma County Department of Permits and Resources, 575 Administrative Drive, Santa Rosa, California.	
COLORADO	
Colorado Springs (City), El Paso County (FEMA Docket No. 7202)	
Pine Creek:	
Approximately 950 feet upstream of Interstate 25	*6,319
Approximately 480 feet upstream of Academy Boulevard	*6,441
Pine Creek Tributary:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 225 feet above confluence with Pine Creek	*6,378
Approximately 2,100 feet upstream of confluence with Pine Creek	*6,398
Maps are available for inspection at the City of Colorado Springs Regional Building Department, 101 West Costilla Street, Colorado Springs, Colorado.	
El Paso County (Unincorporated Areas) (FEMA Docket No. 7188)	
Bear Creek:	
At confluence with Fountain Creek	*5,939
Just above Eighth Street	*5,978
Approximately 570 feet upstream of Eighth Street	*5,985
Black Forest Creek:	
Approximately 160 feet upstream of confluence with Monument Creek	*6,657
Approximately 1,840 feet upstream of Gleneagle Drive	*7,036
Black Forest Creek—Baptist Road Tributary:	
At confluence with Black Forest Creek	*6,955
Approximately 250 feet upstream of Celtic Court	*7,160
Black Forest Creek—Middle Tributary:	
Just upstream of Interstate 25	*6,725
Approximately 100 feet upstream of Westchester Drive	*6,808
Camp Creek:	
At confluence with Fountain Creek	*6,110
Just upstream of 31st Street	*6,266
Just upstream of Gateway Road	*6,314
Approximately 1.5 miles upstream of Gateway Road	*6,524
Crystal Creek:	
At confluence with Monument Lake	*6,922
Approximately 800 feet upstream of Deer Creek Road	*7,138
Crystal Creek—Split Flow Channel:	
At confluence with Dirty Woman Creek	*7,000
Approximately 1,000 feet upstream of Frontage Road	*7,061
Dirty Woman Creek:	
At confluence with Monument Creek	*6,869
Approximately 2,150 feet upstream of Furrow Road	*7,320
Dirty Woman Creek—Lake Fork:	
At convergence with Dirty Woman Creek	*7,006
Approximately 340 feet upstream of Woodmoor Drive	*7,270
Dirty Woman Creek—Middle Fork:	
At confluence with Dirty Woman Creek	*7,142
Approximately 1,050 feet upstream of Furrow Road	*7,336
Dirty Woman Creek—North Fork:	
At confluence with Dirty Woman Creek—Middle Fork	*7,156
Approximately 1.3 miles upstream of Augusta Drive	*7,385
Dirty Woman Creek—South Fork:	
At confluence with Dirty Woman Creek	*7,153
Approximately 975 feet upstream of Furrow Road	*7,320
Douglas Creek South:	
Approximately 4,250 feet upstream of confluence with Monument Creek	*6,212
Just upstream of Holland Park Boulevard	*6,254
1,620 feet upstream of Arrowswest Drive	*6,428
Fisher's Canyon—Above Loomis Avenue:	
Approximately 3,650 feet upstream of Loomis Avenue	*5,913
Approximately 600 feet upstream of Cheyenne Meadows Road	*5,938
Fisher's Canyon-South Branch:	
At confluence with Fisher's Canyon-Above Loomis Avenue	*5,930
Approximately 140 feet upstream of Wycliffe Drive	*5,955
Pine Creek:	
At confluence with Pine Creek	*6,282
Just upstream of U.S. Interstate 25	*6,296
Approximately 600 feet upstream of Academy Boulevard	*6,441
Pine Creek Tributary:	
At confluence with Pine Creek	*6,367
Approximately 1 mile upstream of confluence with Pine Creek	*6,467
Sutherland Creek:	
Approximately 0.25 mile upstream of confluence with Fountain Creek	*6,277
Approximately 1,250 feet upstream of Crystal Hills Boulevard	*6,505
Maps are available for inspection at the El Paso County Regional Building Office, 101 West Costilla, Colorado Springs, Colorado.	
Manitou Springs (City), El Paso County (FEMA Docket No. 7202)	
Sutherland Creek:	
Approximately 1,200 feet upstream of confluence with Fountain Creek	*6,267
Approximately 1,250 feet upstream of Crystal Hills Boulevard	*6,505
Maps are available for inspection at the City of Manitou Springs City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.	
Monument (Town), El Paso County (FEMA Docket No. 7202)	
Black Forest-Baptist Road Tributary:	
At Baptist Road	*7,020
Approximately 120 feet upstream of Baptist Road	*7,022
Crystal Creek:	
Approximately 70 feet upstream of confluence with Monument Lake	*6,923
Approximately 160 feet downstream of Interstate 25	*7,053
Dirty Woman Creek:	
At Mitchell Street	*6,886
Just downstream of Westword Lane	*6,995
Maps are available for inspection at the Town of Monument Town Hall, 166 Second Street, Monument, Colorado.	
MISSOURI	
Lamar Heights (Village), Barton County (FEMA Docket No. 7198)	
North Fork Spring River:	
Approximately 1,500 feet downstream of the Burlington Northern Railroad	*938
Just upstream of First Street	*941
Maps are available for inspection at 128 West Tenth Street, Lamar, Missouri.	
NEBRASKA	
Lincoln (City), Lancaster County (FEMA Docket No. 7118)	
Deadman's Run:	
At confluence with Salt Creek	*1,142
Just downstream of Huntington Avenue	*1,150
Just upstream of bike trail	*1,189
Just upstream of ''O'' Street	*1,220
Just downstream of ''A'' Street	*1,260

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps are available for inspection at the City of Lincoln Planning Department, 555 South Tenth Street, Lincoln, Nebraska.	
NEW MEXICO	
Silver City (Town), Grant County (FEMA Docket No. 7198)	
San Vicente Arroyo:	
Approximately 400 feet downstream of State Route 90	*5,822
At confluence with Silva and Pinos Altos Creeks	*5,890
Pinos Altos Creek:	
At confluence with San Vicente Arroyo	*5,890
At 32nd Street	*6,035
Approximately 1,300 feet upstream of 32nd Street	*6,047
Tributary 7 to Pinos Altos Creek:	
At confluence with Pinos Altos Creek	*5,951
Approximately 700 feet upstream of confluence with Pinos Altos Creek	*5,961
Silva Creek:	
At confluence with San Vicente Arroyo	*5,890
Approximately 2,500 feet upstream of U.S. Route 180 ...	*5,939
Approximately 7,000 feet upstream of U.S. Route 180 ...	*5,990
Maps are available for inspection at the Town of Silver City Town Hall, Broadway Street, Silver City, New Mexico.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5274 Filed 3–3–97; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission, in response to unfavorable conditions in the foreign oceanborne trade between the United States and Japan, is imposing $100,000 per-voyage fees on liner vessels operated by Japanese carriers calling at United States ports. The unfavorable conditions identified by the Commission involve restrictions on and requirements for use of Japanese ports. These conditions arise out of or result from laws, rules, and regulations of the Government of Japan.

DATES: *Effective Date:* April 14, 1997.

ADDRESSES: Requests for publicly available information or additional filings should be addressed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1996, the Commission proposed a rule, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) (''Section 19'') to assess fees on Japanese liner operators in response to requirements and restrictions on the use of Japanese ports.[1] In the Notice of Proposed Rulemaking, 61 FR 58160, Nov. 13, 1996, (''Notice'') the Commission stated that the Government of Japan appeared to discriminate against U.S. carriers by not licensing non-Japanese companies to perform stevedoring or terminal operating services. The Commission further found that the Government of Japan, through its licensing practices and other support, appeared to protect the dominant position of the Japan Harbor Transportation Association (''JHTA''), the trade organization that wields broad control over the Japanese harbor services industry. The Commission explained that JHTA's authority over Japanese harbor services stemmed from its administration of the prior consultation system, a process of mandatory discussions and pre-approvals for ocean carrier operational plans. In response to these conditions, the Commission proposed to levy a per-voyage fee of $100,000 each time a liner vessel owned or operated by one of the three Japanese liner operators serving U.S. trades (Kawasaki Kisen Kaisha, Nippon Yusen Kaisha, and Mitsui O.S.K. Lines) enters a U.S. port from abroad.

The closing date for comments, originally set for January 13, 1997, was extended to January 20, 1997, to allow parties to address the outcome of maritime consultations held between the United States Government and the Government of Japan on January 6–7, 1997.

Comments

American President Lines and Sea-Land Service

Joint comments strongly supporting the proposed rule were filed by American President Lines, Ltd. (''APL''), and Sea-Land Service, Inc. (''Sea-Land''), the two U.S. carriers operating in the Japan trade. Those lines stated:

> The premise on which [the proposed rule] rests is indisputable, namely, that the government of Japan has, through its discriminatory licensing system in the harbor services industry, created conditions unfavorable to shipping in the U.S.-Japan trade. As accurately recounted in the Supplementary Information to the Notice, the stevedoring and terminal services providers in Japan are licensed by the Ministry of Transport (''MOT'') in a largely discretionary process and are exclusively Japanese entities. Also, [JHTA] functions as a trade association of such providers with the approval of MOT. The activities of the JHTA, in which MOT have long acquiesced, are characterized by blatant anti-competitive practices including those at issue in this and prior proceedings of the Commission.

APL/Sea-Land Comments at 1–2.

The U.S. carriers explained that the need for changes in Japanese port practices is becoming more urgent:

> In years past, when carriers performed their individual vessel and terminal operations, JHTA-imposed inefficiencies were merely an unwelcome set of phenomena. However, difficult market conditions in the trans-Pacific trade in general and in the U.S.-Japan trade in particular have forced carriers to enter into reciprocal slot charter and terminal rationalization arrangements in order to increase service competitiveness while lowering costs. Thus, when an economically-driven redeployment of the assets of several carriers operating under a strategic alliance is frustrated or delayed by the absolute control and abuse of power of the JHTA in Japan over

[1] Section 19 authorizes and directs the Commission to ''make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including . . . terminal operations . . . which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country . . . .''

The rules and regulations the Commission is authorized to make include limitation of sailings, suspension of carriers' tariffs or rights to use conference tariffs, suspension of carriers' rights to operate under FMC-filed terminal and other agreements, fees of up to $1,000,000 per voyage, or any other action deemed necessary and appropriate to adjust or meet the unfavorable condition. 46 U.S.C. app. 876(9).

every operational aspect of the alliance, the need for reform becomes acute.

APL/Sea-Land Comments at 4.

APL and Sea-Land also pointed out that other foreign carriers serving Japan are being adversely affected as well. They noted that the European Commission, at the behest of European carriers, has urged the Government of Japan for years to secure the elimination of port restrictions. It was also pointed out that in October of last year, the European Commission filed a formal complaint with the World Trade Organization regarding the prior consultation process and JHTA's ''de facto monopoly on stevedoring in Japan.''

The U.S. carriers opined that the amount of the sanction proposed by the Commission, $100,000 per voyage, is reasonable under the present circumstances. According to those lines, the sanction ''is an assessment which is far less than the economic impact on the U.S. Carriers of the cumulative adverse effects of the prior consultation system, that is, the abuse of unbridled market power by the harbor services industry in Japan.'' APL/Sea-Land Comments at 3. However, the U.S. carriers suggested that, if JHTA were to retaliate against U.S. carriers in response to the actions taken by the Commission, either directly or through labor disturbances, the severity of sanctions should be increased substantially. Similarly, they urged that if the Government of Japan or its instrumentalities take any retaliatory action against the U.S. carriers in response to actions taken by the Commission, the severity of sanctions should also be increased.

The sanctions should be continued until U.S. carriers are licensed to perform stevedoring and terminal operating services co-extensive with those performed by licensed entities in Japan and by Japanese carriers and their affiliates in U.S. ports, the U.S. carriers recommended. Moreover, they argued that they must be free to operate as, or contract for the operation of, stevedores and terminal operators independent of JHTA's system of prior consultation. They also maintained that any remaining conspiracy by the Japan harbor services monopoly to injure or eliminate competition from the new licensees, or to deprive new licensees of a supply of skilled labor, would merit continuing sanctions.

APL and Sea-Land also reported on consultations between the Government of Japan and the United States in Washington on January 6–7, 1997, concerning prior consultation, licensing, and other Japanese port practices. According to the U.S. lines, the Japanese delegation to these talks recited the view that the practices in question were purely commercial matters, and the talks adjourned without an agreement of any kind having been reached.

International Chamber of Commerce

Comments in support of the proposed rule were submitted by the Commission on Maritime Transport of the International Chamber of Commerce (''ICC–CMT''). The comments indicated that the ICC–CMT is made up of representatives of all segments of the maritime sector, including carriers, shippers, forwarders and port interests from around the world.

The ICC–CMT raised the following concerns: (1) Limited competition in Japan's harbor services creates port costs which are arguably among the highest in the world; (2) carriers are subjected to a system of prior consultation with the JHTA which makes it difficult to effectively improve service or reduce costs; and (3) shippers are forced to absorb some of the very high costs which result from these restrictions. The comments expressed hope that the Government of Japan will see to it that port services are opened to competition, and indicated support for all governmental efforts to remove restrictions and assure free and fair trade in maritime transport services.

Japan Foreign Steamship Association

The Japan Foreign Steamship Association (''JFSA''), the organization of non-Japanese shipping lines in Japan, submitted a copy of a position paper urging specific and detailed changes in Japanese port policies and practices.

JFSA represents the interests of the foreign carriers (including the U.S. lines) in prior consultation and other dealings with JHTA. According to a cover letter included in its submission, JFSA's position paper was provided to the Director General of the Maritime Transport Bureau, Ministry of Transport (''MOT''), for consideration at a MOT-chaired meeting between JFSA, the Japanese Shipowners' Association, and JHTA, held January 29, 1997.

JFSA in its position paper proposed a number of changes to the prior consultation system. Under the JFSA plan, shipping lines would be permitted to consult or negotiate directly with their stevedoring companies, rather than be required to submit their operational plans to JHTA for approval. Stevedore companies would then consult (either on their own or, if they choose, through JHTA), with labor. JFSA also urged that the requirement for prior consultation be limited to ''major issues,'' defined as arrangements for rationalization requiring changes in ports, terminals, or berths, that may seriously affect the employment of port laborers, rather than all operational changes, as is currently the case.

In addition, JFSA requested a commitment from MOT, JHTA and its member companies that prior consultations will not be used as a tool for allocating business among member companies, and that prior consultation will never be required for individual business transactions between carriers and stevedoring companies. JFSA proposed procedural rules for prior consultation, including time limits and requirements that decisions be explained in writing. According to JFSA, MOT should be responsible for implementation and enforcement of the revised process, and disputes over operation of the process should be referred to a standing arbitration body nominated by all parties and supervised by MOT.

JFSA urged that, within a reasonable time period, carriers be allowed to freely select stevedore and terminal service companies, and be allowed to obtain unrestricted general stevedore licenses at any or all Japanese ports. The present system of regulated rates, according to JFSA, should be abolished to allow for competitive bidding for port services. In addition, JFSA proposed the implementation of permanent Sunday work, including terminal and gate services, and 24-hour port operations.

According to JFSA, the proposed changes would ''insure fair and equitable commercial operating conditions comparable to those now enjoyed in U.S. and European international trades by Japanese shipping companies.'' The changes were said to be necessary to secure fair and reasonable business practices, protect the significant investment of shipping lines, ascertain a satisfactory service environment for Japanese export and import industry, and maintain and assure sufficient work volume to satisfy labor requirements.

American Association of Exporters and Importers

The American Association of Exporters and Importers (''AAEI'') stated that ''the port practices in question supported by Japanese government regulations are trade restrictive practices working against the interests of U.S. (and all other) shippers.'' AAEI also acknowledged that the practices in question fall within the Commission's jurisdiction.

However, AAEI stated that it believes the practices at issue place Japan in

violation of World Trade Organization (''WTO'') rules, and followed that ''the United States has both the obligation and the long term need to settle its trade disputes, in areas covered by WTO rules, through WTO dispute settlement channels.'' Accordingly, AAEI proposed a procedure whereby the Commission, before taking any action, would join with the Office of the United States Trade Representative to ''satisfy themselves that these . . . port practices . . . are in violation of WTO rules.'' If so satisfied, AAEI would have the Commission take no action while the U.S. sought to resolve these matters through the WTO; otherwise, the agencies would jointly issue an explanation of why WTO rules did not apply, ''in order to justify'' FMC action.

AAEI also asked that the Commission perform an impact study of the costs to the U.S. business community of cargo diversion to Canadian ports which, according to AAEI, might occur as a result of the Commission's action.

Port of Portland

The Port of Portland, located in Portland, Oregon, raised three points concerning the proposed rule. First, it suggested that the Commission should clarify whether the $100,000 fee would be assessed on a ''per port call'' basis, or on a ''per voyage'' basis. Second, it suggested that the Commission consider and publish additional steps the Government of Japan might take to avert the imposition of sanctions. Finally, the Port of Portland expressed concern that the proposed sanctions could lead to the diversion of vessel calls to non-U.S. ports in Mexico and Canada. The Port of Portland urged the Commission to consider and publish alternative sanctions that would not create such a risk.

Japanese Shipowners' Association

The Japanese Shipowners' Association (''JSA'') stated that it is an association domiciled in Japan of 147 shipping companies doing business both in the ocean worldwide trades and in Japan's domestic trades. The JSA indicated that it is ''curious to know why our leading members are to be penalized where they are not accused of any misconduct and where the allegations in the Notice are as vague as they are groundless.'' JSA went on to state:

> Our understanding is that the Japanese Ministry of Transport has never received an application from a U.S. carrier, that the licensing law has not been administered to discriminate against the nationality of an applicant, that no MOT official was authorized to advise any U.S. carriers not to apply for a license and that, according to the Association's inquiry, no such advice was ever given by a responsible MOT official.

Unilateral sanctions proposed against entities having no responsibility could lead to only confusion, as well as to a precedent detrimental to the future of U.S./Japan trade relationships.

Mitsui O.S.K. Lines, Kawasaki Kisen Kaisha, and Nippon Yusen Kaisha

Opposition to Sanctions

Comments and a memorandum opposing the proposed rule were jointly filed by Mitsui O.S.K. Lines, Ltd. (''MOL''), Kawasaki Kisen Kaisha, Ltd. (''K-Line''), and Nippon Yusen Kaisha (''NYK''), the three Japanese liner carriers operating in the U.S. trades. Those lines, as an initial matter, stated that they are private companies, that they are not in a position to direct or control the policies and actions of the Ministry of Transport, and that they ''deplore a statutory application which would punish us irrespective of the lawful character of our carrier operations in the Japan/U.S. oceanborne trades.'' MOL/K-Line/NYK Comments at 4.

The Japanese carriers indicated that they will be severely injured by the threatened sanctions. Based on 1996 vessel operations, during which sailings were said to have averaged 34 per month, imposition of the proposed $100,000 fee reportedly would cost the Japanese lines 3.5 to 4 million dollars per month in 1997, approximately 42 to 45 million dollars per year.

Licensing

The Japanese carriers challenged the Commission's proposed finding that the Ministry of Transport uses its licensing authority to restrict entry and to shield JHTA and its members from foreign competition. They asserted that the Government of Japan has never discriminated against U.S. carriers with regard to the issuance of licenses, and that MOT has never advised U.S. carriers on the matter of licensing or received an application from a U.S. carrier.

The Japanese carriers stated that there is no ownership restriction in the Port Transportation Business Law which would bar a U.S. carrier applicant based on nationality. According to MOL, NYK and K-Line, the supply-demand requirement in the law was enacted as an internal measure to promote tranquility at the waterfront; ''while this restriction inherently serves to place a limit at some point on the number of licenses the ministry can grant, it is a limit when reached that would apply to any applicant regardless of its nationality.'' MOL/K-Line/NYK Memorandum at 2–3. They asserted that MOT has offered written assurance that a U.S. carrier's application ''would be fairly and evenly adjudged under the same standards as Japanese applications. . . .'' *Id.* at 2.

The Japanese carriers argued that the ''basis'' and ''linchpin'' of the Commission's proposed action is the ''single undocumented assertion'' that U.S. carriers have been shut out of the Japanese stevedoring market and advised not to bother to apply, and contended that no legal or factual support is presented to substantiate these findings. *Id.* at 2; MOL/K-Line/NYK Comments at 5. They urged the Commission to discontinue the proceeding on the basis that ''sanctions under section 19 simply cannot be applied absent a demonstration by substantial evidence of discrimination against U.S. carriers.'' MOL/K-Line/NYK Memorandum at 4. They further asserted that the Commission violated section 553(b)(3)(c) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(c), and contravened the carriers' protections of the Due Process Clause of the Fifth Amendment, by failing to disclose factual information such as the timing and circumstances under which inquiries regarding licenses were made, the names of relevant carrier and MOT officials, and accounts of the exchanges. The Japanese carriers urged the Commission to release any such details and to allow an opportunity for comment on them.

The Japanese carriers suggested that the Government of Japan is taking steps to address the licensing-related concerns raised by the Commission. They indicated that in December, 1996, MOT announced a proposal to abolish the licensing system over a three-to-five year period. Attached to the comments was a newspaper article outlining MOT's plan, indicating that prior to any action the proposal would be deliberated at the administrative reform committee and studied at the Council for Transport Policy. Furthermore, the article stated that, as a precondition for such a move, ''measures for ensuring the stable management of ports are necessary.'' MOL/K-Line/NYK Comments, Attachment 3. However, the Japanese lines pointed out that MOT's announcement was met with opposition by waterfront labor unions, suggesting need for a period of time before the intended changes can be made.

Prior Consultation

The Japanese carriers read the Notice to propose that only the Government of Japan's licensing practices, and not

prior consultation, contravene the standards set forth in section 19:

[T]he Commission's Notice observes that it is the Ministry of Transport's discriminatory and restrictive licensing which would ''appear'' to constitute conditions unfavorable to shipping. Though critical of the procedural aspects of the Prior Consultation system and MOT's alleged exercise of authority as to permit JHTA to wield ''unchecked authority'' through the Prior Consultation process, we read the Notice as not concluding that the system itself is a condition which is unfavorable to shipping.

MOL/K-Line/NYK Comments at 10. Nevertheless, they maintained that the Commission has inaccurately characterized the prior consultation system.

MOL, NYK and K-Line suggested that the Commission failed to distinguish between the system of prior consultation itself, which they asserted enjoys the support of both Japanese and non-Japanese carriers, and the way it is administered, which they conceded is in need of reform. They reviewed the procedures for prior consultation:

[M]atters related to innovated services which affect port laborers are negotiated first between the shipping company (or JSPC or JFSA) and JHTA and then JHTA and the harbor workers' Unions. Under the procedures followed since 1986, matters are proposed for prior consultation through the submission of a written application by the shipping company. * * * The initiation of this process is known as ''pre-prior consultation'' under which the matter proposed is considered at a meeting attended by JHTA's Chairman and some of its prior consultation committee members and the shipping company applicant.

Once a matter passes pre-prior consultation and has been accepted by JHTA for Prior Consultation, it is deliberated between JHTA and the Unions, first, at the ''Central'' or national level and then at the local level. Under these procedures, therefore, there are no direct negotiations between shipping companies and the harbor worker unions, thus reducing the prospect of labor conflicts and confrontations.

MOL/K-Line/NYK Comments at 11–12.[2]

The Japanese lines suggested that the prior consultation system was developed to resolve the conflicting objectives of shipping companies and shoreside laborers and to avoid the debilitating confrontations of the past. They asserted that they are aware of no other system that offers a better prospect for labor peace. Pointing to the 1986 boycott of YS Line vessels described in the Notice, they claimed that waterfront unions support prior consultation and are willing to take whatever steps are necessary to defend it.

MOL, NYK and K-Line stated that over the past year parties began to address the flaws in the current system. They described negotiations between shipping lines and JHTA regarding transparency and simplification of procedures, and pointed to an agreement signed in August, 1996, confirming the necessity of prior consultation and establishing new procedures and time limits to accelerate the process.

The Japanese carriers also stated that the Commission did not properly characterize the role of MOT with regard to the prior consultation system. They contended that prior consultation is a private sector business practice, and that MOT has no interest in its continuation, other than labor peace and the smooth running of Japan's ports. According to the Japanese carriers, MOT's only involvement with the system has come when carriers have asked it to bring about the restoration, continuance, and improvement of the system. They maintained that MOT treats prior consultation negotiations as matters for the private sector, except when they break down, at which point MOT may become involved as a catalyst. This is because, according to MOL, NYK and K-Line, under Japanese labor laws, there is a policy of non-interference in employer-union bargaining.

The Japanese lines stated that the 1992 Ministerial View referred to in the Notice was not an endorsement of JHTA's activities; rather, it ''merely called for respect for the existing system regarding the operations of existing container terminals which procedures had been privately negotiated by the parties.'' MOL/K-Line/NYK Comments at 19. The Japanese carriers also pointed out that MOT has endeavored to arrange meetings of interested carrier parties and JHTA with the aim of improving the prior consultation process.

Port and Terminal Interests

After the comment period closed, the Commission received a number of closely similar or identical comments from various port and terminal interests, including H&M International Transportation, Inc.; the Port of Seattle; the Port Authority of New York and New Jersey; the Jacksonville Port Authority; Cronos Containers Inc.; Ceres Terminals Inc.; Georgia Ports Authority; and the Port of Oakland.[3] These comments urged that the Commission stay final action, or reduce or revise the proposed sanctions. The commenters raised the concerns that the Japanese carriers would divert sailings to non-U.S. ports or ''load center'' operations at a single U.S. port. Several of these commenters suggested that it is unfair to penalize Japanese carriers for Japanese port conditions, when the carriers have invested millions of dollars in U.S. terminals, inland facilities, equipment, and ships. Jacksonville Port Authority expressed concerns that the rule would negatively affect the Japanese-flag auto carriers that call there.

Discussion

Licensing

The Japanese carriers appear to have taken the position, first, that the sole basis for the Commission's proposed finding of conditions unfavorable to shipping is the Government of Japan's reportedly restrictive and discriminatory licensing practices, and second, that MOT has never actually acted discriminatorily in issuing licenses. Therefore, they concluded, the proposed rule should be withdrawn. However, both aspects of the Japanese lines' argument are without foundation or merit.

It is clear from the Notice that the administration of the restrictive licensing requirement is not the sole unfavorable condition at issue in this proceeding. Rather, the Commission listed in section 586.2(a)(1–4) of the proposed rule, and explained in detail in the Supplementary Information, an extensive series of apparent unfavorable conditions. These conditions included MOT's refusal to grant U.S. carriers licenses, with the result that U.S. carriers have no choice but to submit their shoreside planning and operations to JHTA control; however, several other conditions were set forth as well, including JHTA's use of the prior consultation system to control competition in the harbor services market, impose restrictions on carrier operations, and force carriers to take on unnecessary stevedoring companies.

There is also little apparent basis for the Japanese carriers' challenges to the Commission's proposed finding that the Government of Japan's licensing processes are discriminatory and restrictive. The Japanese lines asserted that MOT, to their knowledge, never advised U.S. carriers on the matter of licensing or received an application from a U.S. carrier, that there are no

[2] ''JSPC'' refers to the Japanese Shipowners Ports Council, the component of the Japanese Shipowners' Association that deals directly with harbor service-related matters. JSPC often serves as the voice of the Japanese lines in prior consultation and other dealings with JHTA.

[3] The Commission has determined to accept these comments into the record.

nationality-based restrictions in the Port Transportation Business Law, and that MOT would review any new application without regard to nationality. However, these arguments focus entirely on purported procedures for obtaining a license, ignoring the practical bars to obtaining such a license that stem from well-known official Japanese policies. By emphasizing the form and substance of the licensing system, the Japanese lines disregard its discriminatory and restrictive effects and results, which are of primary concern to the Commission.

These official barriers to licensing U.S. carriers and other potential entrants to the stevedoring market, and their practical effects, were confirmed most recently in the U.S.-Japan maritime consultations on January 6–7, 1997. During these meetings, officials from the Departments of State and Transportation reportedly inquired as to how MOT would apply its supply and demand test to a stevedoring application filed by a large organization such as APL or Sea-Land.[4] After reviewing supply and demand factors to be considered, the delegation of the Government of Japan reportedly stated that, in general, Japanese ports are either balanced or supply is slightly larger than demand, that there is already too much competition, and that there are too many service providers already. The Japanese delegation was said then to have suggested that U.S. carriers buy an interest in an existing stevedore company or form a joint venture with such a company, so that the supply-demand balance could be maintained. Given the mandatory nature of the supply-demand test, the position articulated by the Government of Japan leads inescapably to the conclusion that licenses will not be issued to U.S. carriers. Under such circumstances, it would seem futile for U.S. carriers to go to the considerable time and expense of preparing and submitting formal applications, absent a clear shift in policy by the Government of Japan.

Given these conditions, even if the Government of Japan's licensing standard is administered in a nationality-neutral manner, it is still discriminatory and protectionist in effect. By barring new entrants, the licensing system protects existing operators, all of whom are Japanese firms, from competition from U.S. or other foreign companies. It also shields JHTA from competition from new non-JHTA entrants, thereby protecting that group's dominant position.

The Japanese carriers invite the Commission to be sidetracked on an evidentiary dispute regarding whether MOT officials told U.S. carriers that licenses would not be granted, or told them not to apply, or whether involved officials were properly authorized. Such a diversion is unwarranted, however. First, statements by MOT officials that licenses would not be granted are entirely consistent with the position recently articulated by the Government of Japan that supply currently balances or exceeds demand in Japanese ports. More importantly, however, the Commission's concerns regarding licensing are based on the system's restrictive and protectionist effects, rather than the timing or details of any particular bureaucratic exchange.[5]

MOT's recently announced proposal to abolish its current licensing system does not warrant deferral of further Commission action. MOT proposed that the change be made in three to five years, that it be subject to review and consultation by a number of governmental bodies, and that other unspecified measures would be enacted to ensure the ''stable management'' of ports. While elimination of the licensing requirement would address a number of the Commission's concerns, the conditions attaching to the MOT proposal and its over-the-horizon timetable call into question whether, and under what conditions, such reforms might actually be made. If MOT is indeed of the opinion that more entrants and increased competition would be appropriate in the port services sector, its broad administrative discretion could be used to issue new stevedoring licenses to U.S. carriers and other qualified applicants; any action or plan substantially short of that would appear to be an inadequate resolution of these issues.

Prior Consultation

There is no support for the Japanese carriers' broad assertion that the Commission ''fails accurately to describe or comprehend the prior consultation system.'' MOL/K-Line/NYK Comments at 10. The Japanese lines failed to identify any specific factual errors in the Commission's account and, in fact, their description of prior consultation is consistent with that of the Notice, differing only in focus and emphasis on historical context. The U.S. carriers, in contrast, ardently supported the proposed findings in the Notice regarding prior consultation.

As the Japanese carriers explained, the prior consultation system involves ''two party/two party'' negotiations for all planned changes in shipping line operations involving Japanese ports. The first ''two party'' negotiation is between a shipping line and JHTA, while the second is between JHTA and the waterfront unions. As was described in the Notice, virtually all carrier operational changes must be submitted for prior consultation.[6] If a carrier wishes to make such a change and it is deemed important by JHTA, a representative of the line, often accompanied by an official of the stevedoring company it uses, must explain its request to the JHTA Chairman. At this stage (sometimes referred to as ''pre-pre-prior consultation''), the JHTA Chairman may refuse to accept the request, or require changes or impose conditions for acceptance.

If the carrier's request is acceptable to the JHTA Chairman, it is taken up at a formal ''pre-prior consultation'' meeting between the carrier and its stevedore, on the one hand, and JHTA on the other. If the request is accepted at this stage, the matter is deliberated at formal prior consultation meetings between JHTA and union officials, both in Tokyo and at the local level. It appears that the formal pre-prior consultation and prior consultation meetings are merely formalities; if a carrier's request is unacceptable to JHTA, it simply is not accepted for consideration at the formal prior consultation meetings. In contrast, if a request is accepted at the initial stage by the JHTA Chairman, it is almost assured to be approved at the formal meetings.

JHTA's processes are characterized by a total lack of transparency. There are almost no written rules, either substantive or procedural, nor are there written reasons for decisions or an appeal process. JHTA appears to have

[4] Section 19(12) of the Merchant Marine Act, 1920, states: ''the Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies prior to taking any action under this section.''

[5] Moreover, we are skeptical that the Japanese carriers, which in response to the Commission's 1995 Information Demand Orders pled unawareness of virtually all matters concerning MOT's licensing practices, can now credibly attest to the details of MOT officials' past conversations regarding licensing.

[6] As noted in the proposed rule, these include: changes in berth, route, or port calls; inauguration of new services or new vessels; calls by non-container ships at container berths; changes in vessel size or technology which affect stevedoring or terminal operations; temporary assignment of vessels as substitutes or the renaming of vessels; rationalization agreements between carriers involving vessel sharing or berthing changes; the assignment of a stevedoring contractor or terminal operator to a carrier and any subsequent change in assignment; requests for Sunday work; changes in mandatory weighing and measuring arrangements; or any other changes which affect stevedoring or terminal operations.

absolute discretion over the terms and conditions imposed in the prior consultation process.

This arrangement, whereby JHTA can arbitrarily permit or deny carriers access to the prior consultation process, gives JHTA extraordinary leverage. If JHTA refuses to accept a proposed matter for prior consultation, any attempt by the carrier or its stevedore to implement the plan is likely to be met with work stoppages or other labor disruptions. Carriers are left with no choice but to acquiesce to any conditions imposed by JHTA. In a recent conversation with a U.S. Government official, the JHTA Chairman gave a clue as to the extent of his influence and discretion, reportedly stating that he enjoys ''absolute power'' to influence harbor-related matters in Japan.

It is uncontroverted that JHTA uses this leverage (that is, its unchecked authority to accept or reject carrier plans for pre-prior consultation) to prevent competition and maintain an agreed upon allocation of work among JHTA member companies. This conclusion is well-established in the responses of several lines to the Information Demand Orders, and was further supported in the U.S. lines' comments. For example, JHTA has prevented carriers and consortia from freely switching terminals or stevedores, and from consolidating and rationalizing operations. Also, it has refused to grant prior consultation requests unless carriers agreed to employ additional unnecessary stevedoring companies or contractors. Such practices prevent any real competition and undermine attempts to increase the efficiency of port operations, with the result that Japan has port costs that far exceed those of its Asian neighbors and other major trading nations.

The Japanese carriers raised several arguments in defense of the prior consultation system. First, they asserted that the system itself enjoys universal support among carriers. This, however, is clearly incorrect, as JFSA and the U.S. carriers advocate substantial revisions in the current system. Their proposed changes would go to the heart of the Commission's concerns, removing JHTA's free hand to approve or deny carrier requests, restrict competition, and allocate stevedoring work. The improvements advanced by the non-Japanese lines would, among other things, allow carriers to arrange their operations normally with their chosen stevedoring and terminal companies, as is the case in other major maritime nations. Under the JFSA proposal, JHTA could still maintain a legitimate collective bargaining role in negotiations between employers and labor unions, but would no longer be a ''black box'' issuing unappealable directions as to how carriers' shoreside operations should be conducted.

The Japanese carriers stated that the system was created to maintain labor stability and avoid the need for face to face confrontations between carriers and unions over the inauguration of ''innovated vessels.'' They pointed out that the inauguration of container service, which occurred in the 1960's and 70's, raised serious issues and led to disruption in waterfront labor relations in many maritime nations, including the U.S. They suggested that prior consultation is still necessary to avoid the disruptions of the past, and stated that they know of no other system that would better guarantee labor stability.

These reasons, however, do not justify the anticompetitive practices currently engaged in by JHTA. At no point has the Commission ever questioned the appropriateness of JHTA's role as an intermediary between employers and unions, or the practice of collective bargaining for waterfront labor, nor has it challenged any employer's right to designate JHTA as its representative in such negotiations. The Commission's concern lies with JHTA's autocratic control of carrier operations, suppression of competition, allocation of work among members, extraction of fees and other concessions, and retaliation against its detractors. None of these factors is a necessary or logical precondition to JHTA's collective bargaining or labor relations role, and none merits a policy of labor-related ''non-interference'' by the Government of Japan. Rather, these measures only serve to consolidate JHTA's power and shield its member companies from market forces.

While JHTA itself is an organization of harbor service providers, its abuses are not purely private sector matters. As explained in detail in the Notice and Information Demand Orders, in accordance with Japanese laws and regulations, JHTA operates with the permission of, and under the supervision of, MOT, which can annul JHTA's incorporation if it acts contrary to the public interest. MOT is authorized to give oversight or guidance relating to the prior consultation system, and has in fact intervened repeatedly, as confirmed by the Japanese carriers, to bring about the ''restoration, improvement, and continuance'' of the system. Moreover, MOT is vested with broad regulatory authority over JHTA member companies, including licensing authority and the right to review and disapprove rates and business plans. The Japanese lines' protestations that MOT generally takes no role in the day-to-day operations of prior consultation, and that it has no vested interest in its continuation, are immaterial. Given the Government of Japan's regulatory and oversight authority, JHTA and its member firms could not continue to operate in the current manner without the Government of Japan's ongoing support and approval.

The Japanese lines suggested that recent changes in prior consultation have eliminated the U.S. carriers' concerns. While any improvements are praiseworthy, these recent changes have been aimed only at adding transparency and speed to the process. They have done nothing to address the core problems of the system, such as JHTA's absolute authority to block carrier plans at the pre-pre-prior consultation stage, and its use of this authority to eliminate competition and extract other concessions.

Procedural Issues

The Japanese carriers argued that this proceeding is procedurally defective, and that their due process rights have been violated, because they have not had an opportunity to review the responses submitted by other carriers to the Commission's 1995 Information Demand Orders. They asserted that it was improper for the Commission to rely on these materials to reach the proposed findings set forth in the Notice without making them available to the Japanese carriers.

These procedural challenges are without basis. Confidentiality of submissions is explicitly provided for in the statute; section 19(8) states: ''Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.'' The confidentiality provided by this section is necessary to ensure that the Commission receives the most complete and accurate information possible. Disclosure in some cases could lead to retribution against respondents, seriously discouraging candid submissions. These points apparently were not lost on the Japanese carriers, as they requested confidential treatment for their entire Information Demand Order submissions.[7]

[7] The ''[n]otwithstanding any other law . . .'' language in the statute undermines the Japanese carriers'' argument that full disclosure is required by the Administrative Procedure Act. It would defy logic and common tenets of statutory construction to suggest that Congress added the non-disclosure provision in 1990 with the intention that it be

Continued

The Japanese carriers' assertion that their due process rights have been violated also lacks merit. In *American Association of Exporters and Importers* v. *U.S.*, the Court of Appeals for the Federal Circuit rejected statutory and constitutional challenges raised by an importers'' and exporters'' group to actions of the Committee for the Implementation of Trade Agreements, a federal agency, regulating and imposing quotas on trade in textiles. The court found no merit in appellant's claim that the agency violated importers' due process rights by denying them the opportunity to be heard prior to the imposition of quotas. In reasoning applicable to this proceeding, the court held that ''a prerequisite for due process protection is some interest worthy of protecting; 'We must look to see if the interest is within the [Constitution's] protection of liberty and property.' '' 751 F.2d at 1250, quoting *Board of Regents* v. *Roth,* 408 U.S. 564, 571 (1972). The court reasoned that a protectable interest must be more than a unilateral expectation; rather, those seeking constitutional protection under the due process clause must point to a ''legitimate claim of entitlement'' prior to any consideration of the government's constitutional obligations. The court held that the mere subjective expectation of a future business transaction does not rise to the level of an interest worthy of protection, and that ''[n]o one has a protectable interest in international trade.'' *Id.*, citing *Arnett* v. *Kennedy,* 416 U.S. 134, 167 (1974); *Perry* v. *Sinderman,* 408 U.S. 593, 603 (1972); *Norwegian Nitrogen Co.* v. *United States,* 288 U.S. 294 (1933).

The Japanese carriers' expectation to be permitted, in the future, to operate in the U.S. foreign trades free of fees or charges therefore does not rise to the level of an interest in property worthy of constitutional protection. Accordingly, there can be no finding that the Japanese carriers' due process rights were violated.

There also is no merit to the Japanese carriers' argument that the instant proceeding is an ''adjudication'' and that as such they are entitled to additional procedural protections. The Commission's notice did not propose findings of unlawful conduct on the part of these three individual companies. Rather, it proposed findings that there exist conditions unfavorable to shipping in the U.S.-Japan trade, arising out of Japanese laws, rules, and regulations. In response, it proposed an across-the-board fee of $100,000, prospectively establishing the terms and conditions by which all Japanese carriers may operate liner vessels in the U.S. trades. The character of the proceeding is not transformed by the fact that the Commission, drawing on its trade monitoring resources, preliminarily identified in the Notice those carriers that appeared to fall into the subject class. Indeed, should it come to the Commission's attention that other Japanese carriers are operating liner services in the U.S. trades, the final rule will be amended to include them. *See* Docket No. 91–24, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade*—Amendment to Final Rule, 58 FR 7988 (1993) (adding a Korean carrier that had newly entered the trade to a list of lines subject to sanctions).

Port and Terminal Concerns

The Port of Portland asked that the Commission clarify whether the $100,000 fee would be levied ''per-voyage'' or ''per-port call.'' As set forth in the proposed rule, the fee would be assessed on a per-voyage basis; that is, after a line first calls in the U.S. from abroad and is assessed the $100,000 fee, it would not be subject to additional fees for each successive U.S. port call on that voyage. This treatment would seem to eliminate the concern that the fee could lead to Japanese lines dropping or consolidating port calls in the U.S. Also, in response to Jacksonville Port Authority's concerns, we would point out that the rule applies only to container-carrying liner vessels, not dedicated car-carriers.

A number of commenters requested that the Commission address the possibility that Japanese carriers will cancel sailings or shift services to Canadian or Mexican ports in response to the fee. Such actions would appear improbable, and have not, in any event, been suggested by the Japanese carriers thus far in this proceeding. The $100,000 fee represents only a small percentage of the Japanese carriers' gross per-voyage revenues in the U.S. trades.[8] Given carriers' high fixed costs, it is unlikely that they would cancel services, foregoing multi-million dollar revenues, in order to avoid paying the fee. Similarly, it does not appear that the level of the fee would justify the high costs of shifting vessel calls to foreign ports. Such moves would require lines to make costly changes in contracts and arrangements for, among other things, terminal facilities, stevedoring, warehousing and storage, inland transportation, sailing schedules, and foreign and U.S. customs clearance. Nevertheless, the Commission will closely monitor and evaluate cost, revenue, and service level data to guard against adverse effects on U.S. ports, terminals, and shippers.

The Commission is not swayed by the argument, raised by a number of port commenters, that it would be unfair to impose fees on Japanese carriers when they are not responsible for Japanese port conditions and have invested millions of dollars in U.S. port facilities. Indeed, this argument highlights the inequity in treatment afforded U.S. lines in Japan versus that afforded Japanese carriers in this country, as U.S. carriers have had no opportunity to make similar investments in owning and operating Japanese terminal facilities. Japanese carriers have enjoyed continued success in the American market, enjoying high revenues and substantial growth in liner services and terminal operations, in large part due to the favorable and open business climate created by the laws, rules, and regulations of the United States. However, Japanese firms cannot expect to continue to reap the benefits of favorable U.S. transportation policies if such treatment is not reciprocated by the Government of Japan.

Recent Developments

As noted in the comments, a meeting reportedly was held on January 29, 1997, involving JHTA, non-Japanese carriers (represented by JFSA), and Japanese carriers (represented by JSPC). The meeting was arranged and chaired by MOT for the purpose of discussing possible reforms to the prior consultation system. Apparently, at the meeting JFSA presented a proposal based on the position paper submitted to the Commission. No proposals were submitted by JSPC or JHTA. MOT did not take a position on the JFSA proposal. We understand that another such meeting was held February 18,

vitiated by the general provisions of the pre-existing APA. In addition, we would point out that the section cited by the Japanese lines includes an exception ''to the extent there is involved . . . [a] foreign affairs function of the United States.'' 46 U.S.C. § 553(a)(1); *see American Association of Exporters and Importers* v. *U.S.*, 751 F.2d 1239 (Fed. Cir. 1985).

[8] For example, for an average-sized vessel in the Asia-U.S. trades (i.e., a vessel with 3000 20-foot container capacity operating three-quarters full) the FMC fee would cost a carrier about $45 per container. In contrast, a carrier collects freight charges averaging $1,836 per container in the Japan-U.S. trades, and $2,250 from the China, Hong Kong, and Taiwan regions, according to FMC rate indices. A carrier will collect freight of over $4 million for one sailing of one average-sized vessel from Japan to the U.S., and over $5 million from the China range to the U.S., not including revenues from the return or onward voyage.

1997; however, by all accounts, no progress was made.

It appears that the Government of Japan has modified its stance somewhat with regard to JHTA and prior consultation. Rather than insisting that these are purely private matters outside of its control, it now appears to be acknowledging that the system has serious problems and indicating that it will endeavor to bring about a solution. However, thus far MOT's only action has been to arrange meetings, in the hopes that JHTA and the carriers will find a solution among themselves. The Government of Japan has suggested to U.S. officials that more time to reach a solution is needed.

MOT, however, has had ample time to address the restrictive conditions that exist in its ports. The instant controversy did not begin with the issuance of the Commission's Information Demand Orders or proposed rule. The U.S. Government and other major trading nations have been informing the Government of Japan repeatedly and strenuously for several years that its port policies and practices are unacceptable. In October of 1995, the Commission clearly indicated that these problems may be serious enough to warrant sanctions under Section 19. However, the Government of Japan simply maintained that the disputed practices were a matter for the private sector. While it is encouraging that the Government of Japan has finally begun acknowledging the seriousness of these matters, and meeting with involved parties, these steps do not go far enough now to warrant a stay of Commission action.

It appears unlikely, moreover, that a resolution to the current problems involving prior consultation will be reached through commercial negotiations limited to carriers and JHTA. At issue in this proceeding are, among other things, JHTA's dominance of the stevedoring industry, its control of the prior consultation system, and its use of that system to force changes and extract concessions from carriers. It appears, in sum, that JHTA has boundless negotiating leverage, and the carriers, especially foreign carriers, have none. Under such conditions, it is improbable that JHTA will simply volunteer to relinquish its overarching control over port services. Rather, it appears that only decisive measures by the Government of Japan can bring about meaningful reforms.

Demonstrating this point, JHTA recently threatened U.S. Government officials with massive retaliation against U.S. carriers if the Commission does not withdraw its proposed rule. Earlier this month, the JHTA Chairman reportedly told U.S. officials that, unless the threat of FMC sanctions against Japanese carriers is removed, he ''will not let any U.S. ships come into Japanese ports.'' Stating that it would be impossible to resolve issues with sanctions looming, he announced that he intends to suspend prior consultations for U.S. shipping firms, and possibly European firms as well, if the proposed rule is not withdrawn. Such threats were reportedly repeated at the February 18, 1997, meeting between JHTA and the carrier groups.

The JHTA Chairman's threats confirm and validate the need for immediate action in this area. That JHTA could recklessly threaten to disrupt the U.S.-Japan oceanborne trade, causing severe commercial harm to U.S. carriers, shippers, and international commerce, and that it has the apparent will and means to carry out such threats, strongly supports and justifies a finding of conditions unfavorable to shipping. These are clearly not private sector matters; the responsibility lies with the Government of Japan to eliminate the conditions which have left international trade so vulnerable to JHTA's self-serving caprice.

Final Rule

Based on the foregoing, the Commission concludes that a finding of conditions unfavorable to shipping in the U.S.-Japan trade is warranted. Accordingly, the Commission is issuing a final rule levying a fee of $100,000 each time a container-carrying liner vessel owned or operated by a Japanese carrier enters a U.S. port from abroad, assessed in the manner set forth in the proposed rule. This final rule will become effective April 14, 1997.[9]

The Commission is authorized to assess a per-voyage fee of up to one million dollars to adjust or meet conditions unfavorable to shipping in the foreign trade. At this time, a $100,000 fee is an appropriate and measured response to the conditions identified herein. However, if these issues are not addressed in a timely fashion, the level of this fee will be increased.

In addition, the Commission is gravely concerned about the possibility of retaliation against U.S. carriers for the actions and positions taken by the Commission and the United States Government. The validity of these concerns, voiced as well by the U.S. carriers in their comments, was confirmed by the repeated threats of JHTA officials. Therefore, as indicated in the final rule, the Commission has determined that the level of the fee will be increased upon a finding that the Government of Japan, JHTA, or related bodies have retaliated against U.S. carriers. Such a finding may be made expeditiously upon review by the Commission of information collected from carriers, U.S. Government agencies, or other sources, without the need for additional notice and comment. The level of the fee increase will be commensurate with the economic harm to U.S. carriers as a result of the retaliation. Similarly, should a finding of retaliation be made prior to the effective date of the final rule, the rule will be amended to become effective immediately.

List of Subjects in 46 CFR Part 586

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares, Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, Part 586 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The authority section for Part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. Section 586.2 is added to read as follows:

§ 586.2 Conditions unfavorable to shipping in the United States/Japan trade.

(a) *Conditions unfavorable to shipping in the trade.* The Federal Maritime Commission (''Commission'') has identified the following conditions unfavorable to shipping in the U.S.-Japan trade, arising out of or resulting from laws, rules, or regulations of the Government of Japan:

(1) Shipping lines in the Japan-U.S. trades are not allowed to make operational changes, major or minor, without the permission of the Japan Harbor Transportation Association (''JHTA''), an association of Japanese waterfront employers operating with the permission of, and under the regulatory authority and ministerial guidance of, the Japan Ministry of Transport (''MOT'').

(2) JHTA has absolute and unappealable discretion to withhold permission for proposed operational changes by refusing to accept such

[9] Accordingly, the Motion to Withdraw Proposed Rule and Discontinue the Proceeding, filed February 12, 1997, by MOL, NYK, and K-Line, is denied.

proposals for ''prior consultation,'' a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions.

(3) There are no written criteria for JHTA's decisions whether to permit or disallow carrier requests for operational changes, nor are there written explanations given for the decisions.

(4) JHTA uses and has threatened to use its prior consultation authority to punish and disrupt the business operations of its detractors.

(5) JHTA uses its authority over carrier operations through prior consultation as leverage to extract fees and impose operational restrictions, such as Sunday work limits.

(6) JHTA uses its prior consultation authority to allocate work among its member companies (whose rates and business plans are subject to MOT approval), by barring carriers and consortia from freely choosing or switching operators and by compelling shipping lines to hire additional, unneeded stevedore companies or contractors.

(7) The Government of Japan administers a restrictive licensing standard which blocks new entrants from entering into the stevedoring industry in Japan. Given that all currently licensed stevedores are Japanese companies, and all are JHTA members, this blocking of new entrants by the Government of Japan shields existing operators from competition, protects JHTA's dominant position, and ensures that the stevedoring market remains entirely Japanese.

(8) Because of the restrictive licensing requirement, U.S. carriers cannot perform stevedoring or terminal operating services for themselves or third parties in Japan. In contrast, Japanese carriers (or their related companies or subsidiaries) currently perform stevedoring and terminal operating services in Japan and the United States.

(b) *Definitions*—(1) *Japanese carrier* means Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd, and Nippon Yusen Kaisha.

(2) *Designated vessel* means any container-carrying liner vessel owned or operated by a Japanese carrier (or any subsidiary, related company, or parent company thereof).

(c) *Assessment of fees.* A fee of one hundred thousand dollars is assessed each time a designated vessel is entered in any port of the United States from any foreign port or place.

(d) *Report and payment.* Each Japanese carrier, on the fifteenth day of each month, shall file with the Secretary of the Federal Maritime Commission a report listing each vessel for which fees were assessed under paragraph (c) during the preceding calendar month, and the date of each vessel's entry. Each report shall be accompanied by a cashier's check or certified check, payable to the Federal Maritime Commission, for the full amount of the fees owed for the month covered by the report. Each report shall be sworn to be true and complete, under oath, by the carrier official responsible for its execution.

(e) *Refusal of clearance by the collector of customs.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any report required by paragraph (d) of this section within the prescribed period, the Commission may request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at U.S. ports to refuse the clearance required by 46 U.S.C. app. 91 to any designated vessel owned or operated by that carrier.

(f) *Denial of entry to or detention at United States ports by the Secretary of Transportation.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any report required by paragraph (d) of this section within the prescribed period, the Commission may request the Secretary of Transportation to direct the Coast Guard to:

(1) Deny entry for purpose of oceanborne trade, of any designated vessel owned or operated by that carrier to any port or place in the United States or the navigable waters of the United States; or

(2) Detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(g) *Adjustment in fees to meet retaliatory measures.* Upon a finding by the Commission that U.S. carriers have been subject to discriminatory fees, restrictions, service disruptions, or other retaliatory measures by JHTA, the Government of Japan, or any agency, organization, or person under the authority or control thereof, the level of the fee set forth in paragraph (c) shall be increased. The level of the increase shall be equal to the economic harm to U.S. carriers on a per-voyage basis as a result of such retaliatory actions, provided that the total fee assessed under this section shall not exceed one million dollars per voyage.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–5233 Filed 3–3–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 59

[CC Docket 96–237, FCC 97–36]

Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 7, 1996, the Commission released *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996,* Report and Order, CC Docket 96–237, FCC 97–36, to implement new section 259 of the Communications Act of 1934, as added by the Telecommunications Act of 1996. Section 259 generally requires incumbent local exchange carriers (incumbent LECs) to make available ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' to ''qualifying carriers'' that are eligible to receive federal universal service support but that lack economies of scale or scope. Wherever possible, the Commission adopts general rules that restate the statutory language. This approach, which relies in large part on private negotiations among parties to satisfy their unique requirements in each case, will help ensure that certain carriers who agree to fulfill universal service obligations pursuant to section 214(e) can implement evolving levels of technology to continue to fulfill those obligations.

EFFECTIVE DATE: The requirements and regulations established in this decision shall become effective upon approval by the Office of Management and Budget (OMB) of the new information collection requirements adopted herein, but no sooner than April 3, 1997. The Commission will publish a document in the Federal Register announcing the effective date of these regulations following OMB's approval of the information collections in this decision.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Deputy Chief, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952, or Scott Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102. For additional information concerning the information collections in the Report and Order contact Dorothy Conway, at (202) 418–0217, or via the Internet to dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report

and Order, *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996* adopted February 6, 1997 and released February 7, 1997 (CC Docket 96–237, FCC 97–36). The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, Washington, D.C. 20554. This *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed and/or modified information collections contained in this proceeding. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

PAPERWORK REDUCTION ACT: As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, the NPRM invited the general public and the Office of Management and Budget (OMB) to comment on proposed information collection requirements contained in the NPRM.[1] On January 22, 1997, OMB approved the proposed information collection requirements, as submitted to OMB, in accordance with the Paperwork Reduction Act.[2]

In this Report and Order, we adopt new or modified information collection requirements that are subject to OMB review. These requirements are contingent upon approval by OMB. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the PRA. Written comments by the public on the information collections are due 30 days after date of publication in the Federal Register. OMB notification of action is due May 5, 1997. Comments should address: (1) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0755.

Title: Policy and Rules Concerning the Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket 96–237.

Form Number: Not Applicable.

Type of Review: Revision.

Respondents: Business or other for profit, including small businesses.

Burden Estimate:

Section/title	Respondents	Est. time per resp. (hrs.)	Frequency (per year)	Annual burden (hrs.)
(1) Section 259(b)(7) filing of tariffs, contracts or other arrangements	75	1	5	375
(2) Section 259(c) information concerning deployment of new services and equipment	75	2	12	1800
(3) Sixty day notice before termination of agreement	75	1	5	150

Total Annual Burden: 2,325 total hours.

Estimated Costs Per Respondent: $0.00.

Needs and Uses: The information collections for which approval is sought are contained in new section 259 (''Infrastructure Sharing'') of the Communications Act of 1934 (the Act), as amended. First, the information collections adopted pursuant to section 259(c) in this *Report and Order* will provide notice to third parties (qualifying carriers) of changes in the incumbent local exchange carrier's network that might affect the parties' ability to fully benefit from section 259 agreements. Second, the information collected pursuant to section 259(b)(7) will make available for public inspection any tariffs, contracts or other arrangements showing the conditions under which the incumbent LEC is making available public switched network infrastructure and functions pursuant to section 259. Third, the sixty day notice of termination requirement will ensure that third parties (qualifying carriers) will be able to anticipate service disruptions and to inform their customers accordingly. Fourth, placing the burden of proof on providing incumbent LECs to show that section 259 agreements have become economically unreasonable is appropriate because such providing incumbent LECs are seeking to terminate the agreement and are in control of the necessary information. Failing to collect the information would violate the language and the intent of the 1996 Act to ensure that access to the evolving, advanced telecommunications infrastructure would be made broadly available in all regions of the nation at just, reasonable and affordable rates.

Summary of the Report and Order

1. In this Report and Order, part of the Commission's implementation of the Telecommunications Act of 1996,[3] we adopt rules implementing new section 259 of the Communications Act of 1934, as amended.[4] Section 259 generally requires an incumbent local exchange carrier (incumbent LEC)[5] to make available ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' to ''qualifying carriers'' that are eligible to receive federal universal service support but that lack economies of scale or scope.[6] In contrast to sections 251 and 252, which grant rights to requesting carriers irrespective of whether the requesting carrier intends

[1] NPRM at ¶ 55.

[2] *Notice of Office of Management and Budget Action* (OMB No. 3060–0755) (January 22, 1997).

[3] Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996 Act).

[4] The Communications Act of 1934, as amended, 47 U.S.C. §§ 259, *et seq.* (1934 Act or Act).

[5] Section 251(h) of the Communications Act defines incumbent local exchange carriers as follows:

(1) DEFINITION—For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that—

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 CFR 69.601(b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

47 U.S.C. § 251(h).

[6] 47 U.S.C. § 259. *See also* 47 U.S.C. § 214(e).

to compete with the incumbent LEC, section 259 does not permit ''qualifying carriers'' to use an incumbent LEC's public switched network infrastructure, technology, information, and telecommunications facilities and functions obtained pursuant to section 259 to offer services or access to the incumbent LEC's customers in competition with the incumbent LEC. Section 259(a) directs the Commission to prescribe regulations that implement this requirement within one year after the date of enactment of the 1996 Act, i.e., by February 8, 1997.[7] Pursuant to the *Notice of Proposed Rulemaking* that initiated this proceeding,[8] we have elected, overall, to articulate general rules and guidelines to implement section 259.[9]

2. We determine that section 259 is complementary to the other sections of the 1996 Act and is a ''limited and discrete'' provision designed to promote universal service in areas that in many cases, at least initially, will be without competitive service providers, but without restricting the development of competition.[10] Essential differences in the language of sections 259 and 251 make clear that these provisions address fundamentally different situations. First, in accord with section 259(b)(6), section 259 applies only in instances where the qualifying carrier does not seek to use shared infrastructure to offer certain services within the incumbent LEC's telephone exchange area, whereas section 251 applies irrespective of whether new entrants seek to provide local exchange or exchange access service within the incumbent's telephone exchange area.[11] Second, section 259(a) establishes specific limitations on a qualifying carrier's use of an incumbent LEC's infrastructure, i.e., a qualifying carrier may use section 259 only ''*for the purpose* of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has requested and obtained designation as an eligible telecommunications carrier under section 214(e).'' [12] Third, section 259, in contrast to section 251, limits the telecommunications carriers that may obtain access to an incumbent LEC's network by the inclusion of qualifying criteria in subsection 259(d).[13]

3. Thus, we conclude that while section 251 applies to all carriers in all situations—including, but not limited to, new entrants competing with the incumbent LEC—section 259 only applies in narrow circumstances, i.e., for the benefit of those carriers that are eligible to receive universal service support but lack economies of scale or scope and only to the extent that the qualifying carriers do not use section 259-obtained infrastructure to compete with the providing incumbent LEC. We conclude that a qualifying carrier that obtains, pursuant to section 259 arrangements, interconnection, unbundled network elements, and other telecommunications functionalities otherwise available pursuant to section 251, does not lose its section 251-derived obligation to provide interconnection to competitive LECs. We also find that section 259 arrangements can include additional functionalities that may be provided to qualifying carriers uniquely pursuant to section 259. Making clear that we will enforce the section 251-derived interconnection rights of competitive LECs, however, will help ensure that competitive entry into markets served by qualifying carriers markets is not hampered by the operation of otherwise valid section 259 arrangements. Moreover, we further promote competitive entry by finding that qualifying carriers may include *any* carrier that satisfies the requirements of section 259(d)—in other words, not just incumbent LECs, but competitive LECs and any other carrier that satisfies section 259(d) requirements.

4. In this Report and Order, we choose to implement section 259 by adopting rules that recognize the central role played by private negotiations in promoting the ability of qualifying carriers to obtain access to ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' provided by other carriers. A negotiation-driven approach is appropriate because, inter alia, section 259, unlike section 251, contemplates situations where the requesting carrier is not using the incumbent LEC's facilities or functions to compete in the incumbent LEC's telephone exchange area. In such circumstances, we believe that the unequal bargaining power between qualifying carriers, including new entrants, and providing incumbent LECs is less relevant since the incumbent LEC has less incentive to exploit any inequality for the sake of competitive advantage. Thus, wherever possible we adopt specific rules that restate the statutory language. The approach we adopt, which relies in large part on private negotiations among parties to satisfy their unique requirements in each case, will help ensure that certain carriers who agree to fulfill universal service obligations pursuant to section 214(e) can implement evolving levels of technology to continue to fulfill those obligations. Again, because we also affirm the rights of competitive LECs to secure interconnection pursuant to section 251 our approach to implementing section 259 does not discourage the development of competition in any local market.

5. Regarding the scope of section 259(a), we allow the parties to section 259 agreements to negotiate what ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' will be made available, without per se exclusions. We also decide that, whenever it is the *only means* to gain access to facilities or functions subject to sharing requirements, section 259(a) requires the providing incumbent LEC to seek to obtain and to provide necessary licensing of any software or equipment necessary to gain access to the shared capability or resource by the qualifying carrier's equipment, subject to the reimbursement for or the payment of reasonable royalties. We decide that it shall be the responsibility of the providing incumbent LEC to find a way to negotiate and implement section 259 agreements that do not unnecessarily burden qualifying carriers with licensing requirements. In cases where the only means available is including the qualifying carrier in a licensing arrangement, the providing incumbent LEC must secure such licensing by

[7] 47 U.S.C. § 259(a).

[8] *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996,* Notice of Proposed Rulemaking, CC Docket 96–237, FCC 96–456, (released November 22, 1996) (NPRM) 61 FR 63774 (December 2, 1996).

[9] Twenty parties filed comments in this proceeding and fourteen of these parties filed reply comments. Two additional parties filed comments to the Commission which were subsequently transferred to the universal service proceeding in CC Docket 96–45. The parties, along with the shorthand forms of identification used in the Report and Order, are listed in Appendix A of the Report and Order.

[10] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket 96–98, FCC 96–325, 11 FCC Rcd 15499 at ¶¶ 165 (released August 8, 1996), 61 FR 45476 (August 29, 1996) (*Local Competition First Report and Order*). We note that the U.S. Court of Appeals for the Eighth Circuit has stayed the pricing rules developed in the *Local Competition First Report and Order,* pending review on the merits. *Iowa Utilities Board* v. *FCC,* No. 96–3321 (8th Circuit, October 15, 1996).

[11] 47 U.S.C. § 259(b)(6). *See also* Discussion at Section III. C. 6. of the Report and Order.

[12] 47 U.S.C. § 259(a) (emphasis added). *See also* Discussion at Section III. A. 1. of the Report and Order.

[13] 47 U.S.C. § 259(d). *See also* Discussion at Section III. E. of the Report and Order.

negotiating with the relevant third party directly.

6. Regarding the implementation of section 259, we conclude that section 259(a) grants the Commission authority to promulgate rules concerning any section 259 agreement to share public switched network infrastructure, technology, information, and telecommunications facilities and functions, regardless of whether they are used to provide interstate or intrastate services. At the same time, we make clear that nothing in our analysis of section 259 indicates an intent to regulate intrastate services, as opposed to regulating agreements regarding the sharing of infrastructure. We also note that section 259 dictates two discrete roles for the states with respect to section 259: states may accept for public inspection the filings of section 259 agreements that are required by section 259(b)(7); and states must designate a carrier as an ''eligible telecommunications carrier'' pursuant to section 214(e)(2)–(3). We further conclude that it is unnecessary to adopt any particular rules to govern disputes between parties to section 259 agreements that may be brought before the Commission. Finally, we decide that it would be inappropriate to further construe the requirements of section 259(d)(2) in this proceeding because issues materially relating to section 259(d)(2) will be decided by the Commission in the universal service proceeding scheduled to be concluded by May 8, 1997.

7. We require that providing incumbent LECs may recover their costs associated with infrastructure sharing arrangements, and we conclude that incentives already exist to encourage providing and qualifying carriers to reach negotiated agreements that do so (section 259(b)(1)). We decide that no incumbent LEC should be required to develop, purchase, or install network infrastructure, technology, and telecommunications facilities and functions solely on the basis of a request from a qualifying carrier to share such elements when such incumbent LEC has not otherwise built or acquired, and does not intend to build or acquire, such elements. We also decide that a providing incumbent LEC may withdraw from a section 259 infrastructure sharing agreement upon an appropriate showing to the Commission that the arrangement has become economically unreasonable or is otherwise not in the public interest.

8. We permit but do not require providing incumbent LECs and qualifying carriers to develop through negotiation terms and conditions for joint ownership or operation of ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' (section 259(b)(2)). We decide that joint owners will be treated as providing incumbent LECs for purposes of section 259 regulations. We also decide that it is not necessary for the Commission to consider, at this time, the accounting and jurisdictional separations implications of joint ownership arrangements pursuant to section 259.

9. We conclude that infrastructure sharing does not subject providing incumbent LECs to common carrier obligations, including a nondiscrimination requirement, because such a result would be contrary to the clear mandate of section 259(b)(3). In the NPRM we asked whether an ''implied nondiscrimination requirement'' should be inferred based on the ''just and reasonable'' requirement included in Section 259(b)(4). We conclude that Section 259(b)(4) includes no nondiscrimination requirement, but we also conclude that the ''just and reasonable'' requirement will serve to ensure that all qualifying carriers receive the benefits of section 259. We reaffirm that, to the extent that requesting carriers seek access to elements pursuant to section 251, sections 201 and 251 expressly require rates set pursuant to those provisions not only to be just and reasonable, but also non-discriminatory or not unreasonably discriminatory.[14]

10. We decide that, although the Commission may have pricing authority to prescribe guidelines to ensure that qualifying carriers ''fully benefit from the economies of scale and scope of [the providing incumbent LEC],'' it is not necessary at this time to exercise this authority (section 259(b)(4)). We anticipate that, in this negotiation-driven approach, qualifying carriers and providing incumbent LECs will face economic incentives that will allow them to reach mutually satisfactory terms for infrastructure sharing. In particular, we note that, because section 259 contemplates situations where requesting carriers are not using the incumbent LEC's facilities or functions to compete in the incumbent LEC's telephone exchange area, the unequal bargaining power between qualifying carriers, including new entrants, and providing incumbent LECs is less relevant since the incumbent LEC has less incentive to exploit any inequality for the sake of competitive advantage vis-a-vis a non-competing qualifying LEC. We further decide that availability, timeliness, functionality, suitability, and other operational aspects of infrastructure sharing also are relevant to determining whether the qualifying carrier receives the benefits mandated by section 259(b)(4). We conclude that the negotiation process, along with the available dispute resolution, arbitration, and complaint processes available from the Commission, will ensure that qualifying carriers fully benefit from the economies of scale and scope of providing incumbent LECs. We note that non-qualifying competitive LECs may avail themselves of these same processes to prevent unlawful anticompetitive outcomes resulting from section 259-negotiated arrangements. Further, we note that any anticompetitive outcomes may be proscribed by operation of the antitrust laws from which Congress has granted no exemption to parties negotiating section 259 agreements. We further note that the Commission has ample authority pursuant to Title II to set aside any intercarrier agreements found to be contrary to the public interest.

11. We conclude that it is unnecessary at this time for the Commission to establish detailed national rules to promote cooperation (section 259(b)(5)). We conclude that, because there is a requirement that infrastructure sharing arrangements not be used to compete with the providing incumbent LEC, and because a providing incumbent LEC is permitted to recover its costs incurred in providing shared infrastructure pursuant to section 259, sufficient incentives exist to encourage lawful cooperation among carriers. We also decide that the adoption of a good faith negotiation standard would promote cooperation between providing incumbent LECs and qualifying carriers.

12. We conclude that, for any services and facilities otherwise available pursuant to section 251, carriers that do not intend to compete using those services and facilities may request those services and facilities pursuant to either section 251 or 259, and carriers that do intend to compete using those services and facilities must request them pursuant to section 251. We decide that, with respect to facilities and information that are within the scope of section 259 but beyond the scope of section 251, carriers that do not intend to compete using those facilities and information may pursue agreements with incumbent LECs pursuant to section 259. We conclude that a providing incumbent LEC is not required to share services or access used to compete against it, and that an

[14] 47 U.S.C. §§ 201 (not unreasonably discriminatory), 251 (nondiscriminatory).

incumbent LEC's right to deny or terminate sharing arrangements extends to the full breadth of section 259. We also conclude that a qualifying carrier may not make available any information, infrastructure, or facilities it obtained from a providing incumbent LEC to any party that intends to use such information, infrastructure, or facilities to compete with the providing incumbent LEC. We emphasize that this will not otherwise affect the interconnection obligations of carriers pursuant to section 251. Moreover, competitive carriers, i.e., regardless of whether they qualify for infrastructure sharing pursuant to section 259(d), that require the use of information or facilities to compete with the providing incumbent LEC may request the necessary facilities pursuant to sections 251 and 252. We also find that nothing in section 259 permits a providing incumbent LEC to refuse to enter into a section 259 agreement simply because the qualifying carrier is competing with the providing incumbent LEC, provided that the qualifying carrier is not using any shared infrastructure obtained from the providing incumbent LEC pursuant to a section 259 agreement to compete.

13. We decide that section 259 agreements must be filed with the appropriate state commission, or with the Commission if the state commission is unwilling to accept the filing; must be made available for public inspection; and must include the rates, terms, and conditions under which an incumbent LEC is making available all ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' that are the subject of the negotiated agreement (section 259(b)(7)). We decide that this filing requirement refers only to agreements negotiated pursuant to section 259 and affirm that all previous interconnection agreements must be filed pursuant to section 252 as mandated by the Commission's *Local Competition First Report and Order*.[15]

14. We decide that section 259(c) requires notice to qualifying carriers of changes in the incumbent LECs' network that might affect qualifying carriers' ability to utilize the shared public switched network infrastructure, technology, information and telecommunications facilities and functions; that section 259(c) requires timely information disclosure by each providing incumbent LEC for each of its section 259-derived agreements; and that such notice and disclosure, provided pursuant to a section 259 agreement, are only for the benefit of the parties to a section 259-derived agreement. We also decide that section 259(c) does not include a requirement that providing incumbent LECs provide information on planned deployments of telecommunications and services prior to the make/buy point.

15. We decide that no incumbent LEC is excused, per se, from sharing its infrastructure because of the size of the requesting carrier, its geographic location, or its affiliation with a holding company. A carrier qualifying under section 259(d) therefore may be entitled to request and share certain infrastructure and, at the same time, be obligated to share the same or other infrastructure. We conclude that parties to section 259 negotiations can and will make the necessarily fact-based evaluations of their relative economies of scale and scope pertaining to the infrastructure that is requested to be shared. To facilitate such negotiations, we adopt a presumption that a telecommunication carrier falling within the definition of ''rural telephone company'' in section 3(37) lacks economies of scale or scope under section 259(d)(1), but we decide to exclude no class of carriers from attempting to demonstrate to a providing incumbent LEC that they qualify under section 259(d)(1). In negotiations with a requesting carrier or in response to a complaint arising from a refusal to enter into a section 259 agreement, a providing incumbent LEC may rebut the presumption that a ''rural telephone company'' lacks economies of scale or scope.

Final Regulatory Flexibility Act Analysis

16. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996.[16] The Commission sought written public comments on the proposals in the *Infrastructure Sharing NPRM* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996).[17]

A. Need for and Objectives of This Report and Order and the Rules Adopted Herein

17. The Commission, in compliance with section 259(a) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, promulgates the rules in this Report and Order to ensure the prompt implementation of the infrastructure sharing provisions in section 259 of the 1996 Act. Section 259 directs the Commission, within one year after the date of enactment of the 1996 Act, to prescribe regulations that require incumbent LECs to make certain ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' available to any qualifying carrier in the service area in which the qualifying carrier has requested and obtained designation as an eligible carrier under section 214(e).[18]

B. Summary and Analysis of the Significant Issues Raised by the Public Comments in Response to the IRFA

18. The only party to comment on our IRFA, the Rural Telephone Coalition (RTC), essentially argues that the Commission violated the RFA when we declined to include small incumbent LECs in our definition of the class of entities protected by the RFA.[19] RTC argues that small incumbent LECs that meet the SBA definition of ''small entities'' are among the class of carriers that will be affected by these rules either as providing incumbent LECs or as qualifying carriers.[20] RTC argues that the Commission has engaged in a ''meaningless exercise'' despite the fact that our IRFA included estimates of the number of small incumbent LECs potentially affected by the proposed rules and presented alternatives for comment by the public.

19. We disagree. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.''[21]

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[15] *Local Competition First Report and Order* at ¶ 165–171. We note that section 252(a) requires all interconnection agreements, ''including any interconnection agreements negotiated before the date of enactment of the Telecommunications Act of 1996,'' to be submitted to the appropriate state commission for approval. In contrast, we note that section 259 does not include a comparable provision.

[16] NPRM at ¶ 55.

[17] SBREFA was codified as Title II of the Contract With America Advancement Act of 1996 (CWAAA), 5 U.S.C. § 601 et seq.

[18] 47 U.S.C. § 259. *See also* 47 U.S.C. § 214(e)(1).

[19] RTC Comments at 631.

[20] *Id.*

[21] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket 96–98, FCC 96–325, 11 FCC Rcd 15499 at ¶¶ 1328–30, 1342

Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we did consider small incumbent LECs within the IRFA and used the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' [22] We find nothing in this record to persuade us that our prior practice of treating all LECs as dominant is incorrect. Thus, we conclude that we have fully satisfied the requirements and objectives of the RFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Adopted in the Report and Order in CC Docket 96–237 Will Apply

20. Section 259 of the 1934 Act, as added by the 1996 Act, establishes a variety of infrastructure sharing obligations.[23] Many of the obligations adopted in this Report and Order will apply solely to providing incumbent LECs which may include small business concerns.[24] The beneficiaries of section 259 infrastructure sharing agreements—also affected by the rules adopted herein—are the class of carriers designated as ''qualifying carriers'' under section 259(d).[25] Such qualifying carriers must be telecommunications carriers, which, as defined in section 3(44) of the act, may include LECs, non-LEC wireline carriers, and various types of wireless carriers.[26] Because section 259(d)(1) limits qualifying carriers to those carriers that ''lack economies of scale or scope,'' it is likely that there will be small business concerns affected by the rules proposed in this *NPRM.* We note, however, that section 259(d)(2) makes the definition of ''qualifying carriers'' dependent on the Commission's decisions in the universal service proceeding.[27] Until the Commission issues an order pursuant to the *Universal Service NPRM* that addresses related issues, it is not feasible to define precisely the number of ''qualifying carriers'' that may be ''small business concerns'' or, derivatively, the number of incumbent LECs that may be ''small business concerns.'' [28] With that caveat, we attempt to estimate the number of small entities—both providing incumbent LECs and qualifying carriers—that may be affected by the rules included in this Report and Order.

21. For the purposes of this analysis, we examined the relevant definition of ''small entity'' or ''small business'' and applied this definition to identify those entities that may be affected by the rules adopted in this Report and Order. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[29] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[30] Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[31] We first discuss generally the total number of small telephone companies falling within both of those categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

22. As discussed supra, and consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of ''small entity'' and ''small business concerns'' for the purpose of this IRFA. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.'' [32] Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' [33]

21. Telephone Companies (SIC 481)

23. *Total Number of Telephone Companies Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. [34] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' [35] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order.

24 *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except

(released August 8, 1996), 61 FR 45476 (August 29, 1996) (*Local Competition First Report and Order*). We note that the U.S. Court of Appeals for the Eighth Circuit has stayed the pricing rules developed in the *Local Competition First Report and Order,* pending review on the merits. *Iowa Utilities Board* v. *FCC,* No. 96–3321 (8th Circuit, October 15, 1996).

[22] *See id.*

[23] 47 U.S.C. § 259.

[24] *See, e.g.,* 47 U.S.C. § 259(a).

[25] 47 U.S.C. § 259(a), (d).

[26] 47 U.S.C. § 259(d). *See also* 47 U.S.C. § 3(44).

[27] 47 U.S.C. § 259(d)(2). *See Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking and Order Establishing Joint Board, CC Docket 96–45, FCC 96–93 (released March 8, 1996), 61 FR 10499 (March 14, 1996) (''*Universal Service NPRM*'').

[28] *See Universal Service NPRM;* see also Joint Board Recommendation on Universal Service, Recommended Decision, CC Docket 96–45, FCC 96J–3 (released November 8, 1996), 61 FR 63778 (December 2, 1996) (*Joint Board Recommendation on Universal Service*) (recommending eligibility criteria for carriers seeking universal service support). We note that the Commission must complete a proceeding to implement the Joint Board's recommendations on or before May 8, 1997.

[29] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. § 632).

[30] 15 U.S.C. § 632.

[31] 13 C.F.R. § 121.201.

[32] *See Local Competition First Report and Order* at ¶¶ 1328–30, 1342.

[33] *See id.*

[34] United States Department of Census, Bureau of the Census, *1992 Census of Transportation,* Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (''*1992 Census*'').

[35] 15 U.S.C. § 632(a)(1).

Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[36] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[37] Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as ''small business concerns'' under the SBA's definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules and we seek comment on this conclusion.

25. *Local Exchange Carriers.* Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, we have two methodologies available to us for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed, supra. Our alternative method for estimation utilizes the data that we collect annually in connection with the Telecommunications Relay Service (TRS). This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[38] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the actions proposed in this *NPRM.*

26. Our remaining comments are directed solely to non-LEC entities that may eventually be designated as ''qualifying carriers.'' Section 259(d)(2) requires qualifying carriers, inter alia, to offer ''telephone exchange service, exchange access, and any other service that is included in universal service'' within the carrier's service area per universal service obligations imposed pursuant to section 214(e). As addressed supra, because section 259(d)(2) makes the scope of potential ''qualifying carriers'' contingent upon the Commission's decisions in the universal service proceeding, we are unable to define the scope of small entities that might eventually be designated as ''qualifying carriers.''[39] Thus, the remaining estimates of the number of small entities affected by our rules—based on the most reliable data for the non-LEC wireline and non-wireline carriers—may be overinclusive depending on how many such entities otherwise qualify pursuant to section 259(d)(2).

27. *Non-LEC wireline carriers.* We next estimate the number of non-LEC wireline carriers, including interexchange carriers (IXCs), competitive access providers (CAPs), Operator Service Providers (OSPs), Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to our most recent data: 130 companies reported that they are engaged in the provision of interexchange services; 57 companies reported that they are engaged in the provision of competitive access services; 25 companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and 30 reported being ''other'' toll carriers.[40] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing *TRS Worksheets* are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as ''other,'' and some simply as IXCs. Consequently, we estimate that there are fewer than 130 small entity IXCs; 57 small entity CAPs; 25 small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and 30 ''other'' toll carriers that might be affected by the actions and rules adopted in this *Report and Order.*

28. *Radiotelephone (Wireless) Carriers*: The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[41] According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.[42] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, and, we are unable to estimate with greater precision the number of radiotelephone carriers and service providers that would both qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that might be affected by the

[36] *1992 Census,* supra, at Firm Size 1–123.

[37] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

[38] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data,* Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (December 1996) (''*TRS Worksheet*'').

[39] *See Universal Service NPRM*; see also *Joint Board Recommendation on Universal Service* (recommending eligibility criteria for carriers seeking universal service support). We note that the Commission must complete a proceeding to implement the Joint Board's recommendations on or before May 8, 1997.

[40] *TRS Worksheet,* at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

[41] *1992 Census,* supra, at Firm Size 1–123.

[42] 13 CFR § 121.201, (SIC Code 4812).

actions and rules adopted in this *Report and Order*.

29. *Cellular and Mobile Service Carriers*. In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services.[43] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the actions and rules adopted in this *Report and Order*.

30. *Broadband PCS Licensees*. In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR § 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA.[44] The Commission has auctioned broadband PCS licenses in Blocks A through F. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in the *Infrastructure Sharing Report & Order* includes, at a minimum, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements and Steps Taken To Minimize the Significant Economic of This Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

31. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs, and we mention some of the skills needed to meet these new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. Overall, we anticipate that the impact of these rules will be beneficial to small businesses since they may be able to share infrastructure with larger incumbent LECs, in certain circumstances, enabling small carriers to provide telecommunication services or information services that they otherwise might not be able to provide without building or buying their own facilities.[45]

Section 259(a)

32. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements*. Regarding the scope of section 259(a), we allow the parties to section 259 agreements to negotiate what ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' will be made available, without *per se* exclusions.[46] In addition, we conclude that qualifying carriers should be able to obtain network facilities and functionalities available under section 251—including lease arrangements and resale—alternatively pursuant to section 251 or pursuant to section 259 (subject to the limitations in section 259(b)(6)), or pursuant to both if they so choose.[47]

33. To the extent that there are small businesses that are providing incumbent LECs, they will be required to make available ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' to defined qualifying carriers. We anticipate that compliance with such requests for infrastructure sharing may require the use of legal, engineering, technical, operational, and administrative skills. At the same time, these rules should create opportunities for small businesses that are qualifying carriers to utilize infrastructure that might not otherwise be available. To obtain access to infrastructure from a providing incumbent LEC, a qualifying carrier is required to pay the costs associated with the shared infrastructure.

34. *Steps Taken To Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected*. We reject proposals offered by those parties who would assert limitations that remove whole classes or categories of ''public switched network infrastructure, technology, information and telecommunications facilities and functions''—e.g., resale services and classes of non-network information—from the scope of section 259(a).[48] Similarly, we declined to exclude section 251-provided interconnection elements from section 259 arrangements.[49] We believe that the flexible approach that we adopt will give parties the ability to negotiate unique agreements that will vary based on individual requirements of parties in each case. Such an approach is particularly important because as technology continues to evolve, definitions based on present network requirements seem likely to limit qualifying carriers' opportunities to

[43] *TRS Worksheet*, at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

[44] *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket 93–253, Fifth Report & Order, 9 FCC Rcd 5532, 5581–84, 59 FR 37566 (July 22, 1994).

[45] 47 U.S.C. § 259(a).

[46] *See Infrastructure Sharing Report and Order* Discussion at Section III. A. of the Report and Order.

[47] *See Infrastructure Sharing Report and Order* Discussion at Section III. B. 1. of the Report and Order.

[48] *See, e.g.*, GTE Comments at 4 (''Section 259 requires only the sharing of infrastructure, not services. When Congress intended to include services, it did so specifically . . . .''); Southwestern Bell Comments at i, 5; Sprint Comments at 4 (''section 259 establishes requirements for the sharing of infrastructure, not the provision of service''); NCTA Comments at 4 n.13 (scope of section 259(a) should be no broader than section 251). *But see* RTC Comments at 7. *See also Infrastructure Sharing Report and Order* Discussion at Section III. B. 1. of the Report and Order.

[49] *See Infrastructure Sharing Report and Order* Discussion at Section III. B. 1. of the Report and Order.

obtain infrastructure unnecessarily. Further, we found no clear evidence of Congressional intent to limit the broad parameters of section 259(a).

35. Overall, we believe that there will be a significant positive economic impact on small entity carriers that—as a result of section 259 agreements—will be able to provide advanced telecommunications and information services in the most efficient manner possible by taking advantage of the economies of scale and scope of incumbent LECs. With regard to any small incumbent LECs that might receive requests for infrastructure sharing from qualifying carriers, we believe that the statutory scheme imposed by Congress and adopted in our rules will promote small business interests. First, we note that section 259(b)(1) protects providing incumbent LECs—small and large, alike—from having to take any actions that are economically unreasonable.[50] Second, we note that, under our rules, an incumbent LEC may demonstrate that the requesting carrier does not lack economies of scale and scope, relative to itself, with respect to the requested infrastructure and, thus, may avoid infrastructure sharing obligations in certain situations.[51]

Section 259(b) Terms and Conditions of Infrastructure Sharing

36. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* We require that providing LECs can recover their costs associated with infrastructure sharing arrangements, and we conclude that market incentives already exist to encourage providing and qualifying carriers to reach negotiated agreements that do so (section 259(b)(1)).[52] Congress directed in section 259(b)(4) that providing incumbent LECs make section 259 agreements available to qualifying carriers on just and reasonable terms and conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such providing incumbent local exchange carriers. We decide that, although the Commission has pricing authority to prescribe guidelines to ensure that qualifying carriers ''fully benefit from the economies of scale and scope of [the providing incumbent LEC],'' it is not necessary at this time to exercise this authority (section 259(b)(4)).[53]

37. We decide that section 259 agreements must be filed with the appropriate state commission, or with the Commission if the state commission is unwilling to accept the filing, and must be made available for public inspection (section 259(b)(7)). Compliance with this rule will require legal and administrative skills.

38. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* We generally reject proposals that incumbent LECs should be required to develop, purchase, or install network infrastructure, technology, and telecommunications facilities and functions solely on the basis of a request from a qualifying carrier to share such elements when such incumbent LEC has not otherwise built or acquired, and does not intend to build or acquire, such elements.[54] Because the record did not indicate that there would exist any scale and scope benefits in situations where the providing incumbent LEC did not also use the facilities, we concluded that such a result would be inappropriate. We believe that the approach that we adopt will enable small entity qualifying carriers to enjoy the benefits of section 259 sharing agreements without imposing undue burdens on providing incumbent LECs.

39. Further, we decline to accept various proposals that the Commission adopt pricing schemes for infrastructure shared per section 259.[55] Instead, we conclude that the negotiation process, along with the available dispute resolution, arbitration, and formal complaint processes available from the states and the Commission, will ensure that qualifying carriers fully benefit from the economies of scale and scope of providing LECs. We believe that allowing providing incumbent LECs—including any small business—to recover the costs associated with infrastructure sharing will encourage and facilitate infrastructure sharing agreements. We believe that such agreements will lead to mutual benefits for both qualifying carriers and providing incumbent LECs.

Section 259(c) Information Disclosure Requirements

40. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* The statute also requires incumbent LECs to provide ''timely information on the planned deployment of telecommunications services and equipment'' to any parties to infrastructure sharing agreements.[56] The rules we adopt herein require disclosure by each providing incumbent LEC for each of its section 259-derived agreements and require that such notice and disclosure are only for the benefit of the parties to a section 259-derived agreement. Under our rules, providing incumbent LECs must provide notice of changes in their networks that might affect qualifying carriers' ability to utilize the shared infrastructure. Should a small incumbent LEC be subject to this requirement, we anticipate that it will require use of engineering, technical, operational, and administrative skills.

41. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* A number of parties suggest that the Commission need not adopt any new disclosure rules pursuant to section 259(c) because other network disclosure provisions provide similar notice of changes in the network.[57] We conclude that specific notice of changes to an incumbent LEC's network that affect a qualifying carrier's ability to utilize the shared infrastructure, a qualifying carrier—including small businesses—will enable qualifying carriers, including small entities, to maintain a high level of interoperability between its network and that of the providing incumbent LEC.

42. We also decide that section 259(c) does not include a requirement that providing incumbent LECs provide information on planned deployments of telecommunications and services prior to the make/buy point. We conclude that section 259 does not require such mandatory joint planning, but we note that providing incumbent LECs may have obligations to coordinate network planning and design under sections 251(a), 256, 273(e)(3) and other provisions.

[50] *See Infrastructure Sharing Report and Order* Discussion at Section III. C. of the Report and Order.

[51] *See Infrastructure Sharing Report and Order* Discussion at Section III. E. of the Report and Order.

[52] *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 1. of the Report and Order.

[53] *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 4. of the Report and Order.

[54] MCI Comments at 7. *Contra* NYNEX Reply Comments at 10. *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 1. of the Report and Order.

[55] *See, e.g.*, MCI Comments at 7. *Contra* RTC Comments at 11. *See Infrastructure Sharing Report and Order* Discussion at Section III. C. 1. and 4. of the Report and Order.

[56] *See Infrastructure Sharing Report and Order* at Section III. D. of the Report and Order.

[57] *See, e.g.*, NYNEX Comments at 16–17; GTE Comments at 12.

Section 259(d) Definition of Qualifying Carriers

43. *Summary of Projected Reporting, Recordkeeping, and other Compliance Requirements.* We adopt a rebuttable presumption that carriers satisfying the statutory definition of ''rural telephone company'' in section 3(37) also satisfy the qualifying criteria in section 259(d)(1) of lacking ''economies of scale or scope,'' but we decide to exclude no class of carriers from attempting to show that they qualify under section 259(d)(1).[58] A carrier otherwise qualifying under section 259(d) therefore may be entitled to request and share certain infrastructure and, at the same time, be obligated to share the same or other infrastructure. We conclude that parties to section 259 negotiations can and will make the necessarily fact-based evaluations of their relative economies of scale and scope pertaining to the infrastructure that is requested to be shared. Complying with the section 259 process set out in our rules may require small incumbent LECs and requesting small entities to use legal and negotiation skills.

44. *Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected.* We believe that the approach we take will facilitate negotiations between requesting carriers and incumbent LECs. We expect that many if not most requests for infrastructure sharing agreements will be made by carriers whose customers reside predominantly, if not exclusively, in rural, sparsely-populated areas.[59] At the same time, there is nothing in the statutory language or legislative history to persuade us that Congress intended such a per se restriction on who can qualify under section 259(d). Thus, we rejected proposals that we limit qualifying carriers to those who meet the requirements of section 3(37).[60] We opposed these proposals because they would unduly limit the opportunities to engage in section 259 sharing agreements to those qualifying carriers located in particular geographic areas. We believe that the approach that we have adopted will enable all small entity qualifying carriers to enjoy the benefits of section 259 sharing agreements without regard to their geographic location.

F. Report to Congress

45. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801 (a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

Ordering Clauses

46. Accordingly, *It is ordered* That, pursuant to sections 4(i), 4(j), 201–205, 259, 303(r), 403 of the Communications Act of 1934, as amended by the 1996 Act, 47 U.S.C. §§ 154(i), 154(j), 201–205, 259, 303(r), 403, the rules, requirements and policies discussed in this Report and Order *are adopted* and §§ 59.1 through 59.4 of the Commission's rules, 47 CFR §§ 59.1 through 59.4, *are adopted* as set forth below.

47. *It is further ordered* That the requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than April 3, 1997. The Commission will publish a notice in the Federal Register announcing OMB's approval of the information collections in this decision.

List of Subjects in 47 CFR Part 59

Antitrust, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Rural areas, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 59 of Title 47 of the Code of Federal Regulations is added to read as follows:

PART 59—INFRASTRUCTURE SHARING

Sec.

Authority: 47 U.S.C. 154(i), 154(j), 201–205, 259, 303(r), 403.

§ 59.1 General duty.

Incumbent local exchange carriers (as defined in 47 U.S.C. section 251(h)) shall make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has obtained designation as an eligible telecommunications carrier under section 214(e) of 47 U.S.C.

§ 59.2 Terms and conditions of infrastructure sharing.

(a) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be required to take any action that is economically unreasonable or that is contrary to the public interest.

(b) An incumbent local exchange carrier subject to the requirements of section 59.1 may, but shall not be required to, enter into joint ownership or operation of public switched network infrastructure, technology, information and telecommunications facilities and functions and services with a qualifying carrier as a method of fulfilling its obligations under section 59.1.

(c) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be treated by the Commission or any State as a common carrier for hire or as offering common carrier services with respect to any public switched network infrastructure, technology, information, or telecommunications facilities, or functions made available to a qualifying carrier in accordance with regulations issued pursuant to this section.

(d) An incumbent local exchange carrier subject to the requirements of section 59.1 shall make such public switched network infrastructure, technology, information, and telecommunications facilities, or functions available to a qualifying carrier on just and reasonable terms and pursuant to conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier. An incumbent local exchange carrier that has entered into an infrastructure sharing agreement pursuant to section 59.1 must give notice to the qualifying carrier at least sixty days before terminating such infrastructure sharing agreement.

(e) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be required to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to

[58] *See Infrastructure Sharing Report and Order* Discussion at Section III. E. of the Report and Order.

[59] *See* RTC Comments at 19–20 (urging the Commission to adopt a rebuttable presumption in favor of ''rural telephone companies'').

[60] *See* NCTA Comments at 3.

consumers by the qualifying carrier in such local exchange carrier's telephone exchange area.

(f) An incumbent local exchange carrier subject to the requirements of section 59.1 shall file with the State, or, if the State has made no provision to accept such filings, with the Commission, for public inspection, any tariffs, contracts, or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure, technology, information and telecommunications facilities and functions pursuant to this part.

§ 59.3 Information concerning deployment of new services and equipment.

An incumbent local exchange carrier subject to the requirements of section 59.1 that has entered into an infrastructure sharing agreement under section 59.1 shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

§ 59.4 Definition of ''qualifying carrier''.

For purposes of this part, the term ''qualifying carrier'' means a telecommunications carrier that:

(a) Lacks economies of scale or scope; and

(b) Offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under section 214(e) of 47 U.S.C.

[FR Doc. 97–5177 Filed 3–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002 and 1180

[STB Ex Parte No. 556]

Railroad Consolidation Procedures—Modification of Fee Policy

AGENCY: Surface Transportation Board (Board), DOT.

ACTION: Interim rules with a request for comments.

SUMMARY: In this proceeding the Board adopts interim rules relating to the fee policy for proceedings involving major railroad consolidations under the Board's regulations at 49 CFR part 1180 and corresponding modifications in the Board's fee regulations at part 1002. The Board also adopts technical amendments to conform part 1180 to the ICC Termination Act of 1995.

DATES: Interim rules are effective on March 4, 1997; comments must be filed by April 3, 1997.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 556 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1201 Constitution Avenue, NW., Washington, DC 20423–0001.[1]

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5249 or David T. Groves, (202) 927–6395 [after March 16, 1997, (202) 565–1551]. [TDD for the hearing impaired: (202) 927–5721. (after March 16, 1997, (202) 565–1695).]

SUPPLEMENTARY INFORMATION: The Independent Office Appropriation Act of 1952, 31 U.S.C. 9701 (IOAA), is the basis for user fees charged by federal government agencies, including this one. Under the IOAA, agencies are required to ensure that ''. . . each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a). Administrative guidance for implementation of the IOAA is provided in the Office of Management and Budget Circular A–25 User Fees, as revised July 8, 1993 (Circular A–25). Circular A–25 states that the general policy of the federal government is as follows: ''A reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.''

According to our current user fee policy, the filer of a primary application under our merger and consolidation regulations at 49 CFR part 1180 is not required to pay additional filing fees for directly related proceedings that are filed along with the primary application. Recently, in *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corporation, et al.*, Finance Docket No. 32760 (*UP–SP Merger*), there were 30 directly related proceedings filed concurrently with the application. Of the 30 transactions, 21 were railroad abandonment or discontinuance of service applications, petitions for exemption, and notices of exemption.[2] The directly related proceedings in *UP–SP* Merger engendered substantial additional staff work, such as the environmental review process that was required for each abandonment or discontinuance proceeding. Under our current fee policy, no additional filing fees were assessed for those proceedings at the time of the their filing.[3]

The current railroad consolidation fees understate the costs associated with processing directly related proceedings filed by the primary applicant(s). Therefore, to ensure that the costs associated with these directly related proceedings are borne by the primary applicant (the direct beneficiary of the Board's action), we are modifying our fee policy to require a separate fee for each and every directly related application, petition and/or notice that is filed with the primary application. The fee for a directly related proceeding will be the same as it would be if the directly related application, petition and/or notice were filed separately. For example, if the directly related proceeding involves a petition for exemption for abandonment or discontinuance of a rail line, the $3,800 fee currently set forth at fee item (21)(iii), would be assessed for that proceeding. Appropriate modifications are being made at 49 CFR 1002.2(d) and 1180.4(c) to reflect this fee policy change.

In addition, under the Board's existing fee policy regulations, the same fee of $4,700 is applied to any type of responsive application, including an inconsistent application. This policy, however, does not allow us to recover the full cost of handling an inconsistent application. The additional staff work required to review and analyze an

[1] The Board is scheduled to relocate its offices over the weekend of March 15–16, 1997. Its new address will be: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. We note that mail will not be received from March 13–18, 1997 (mail delivery will resume thereafter at the new location).

[2] In *Regulations Governing Fees For Services*, 1 I.C.C.2d 60 (1984), two proceedings, *Union Pacific-Control-Missouri Pacific; Western Pacific*, 366 I.C.C. 459 (1982) (*Union Pacific*), and *Norfolk Southern Corp.-Control-Norfolk & W. Ry. Co.*, 366 I.C.C. 171 (1982) (*Norfolk Southern*), formed the basis for computing the original fees for railroad consolidation proceedings. Those cases did not include nearly as many directly related proceedings as *UP–SP Merger*. In the *Norfolk Southern* proceeding, there were only eight directly related transactions filed concurrently with the primary application. They involved four construction and operation transactions, two railroad abandonments, one issuance of common stock, and one acquisition of a motor carrier. The *Union Pacific* proceeding included thirteen directly related transactions that entailed five trackage rights requests, three poolings of operations, three issuances of common stock, and two motor carrier acquisitions.

[3] Subsequently, however, the Secretary of the Board requested payment from the applicants of filing fees for the 21 abandonment or discontinuance of service proposals in *UP–SP Merger*, and the applicants paid those fees.

inconsistent application is in most cases comparable to the work expended to process the primary application. Consequently, we are adding the regulations at 49 CFR 1180.4(d)(4)(ii) to state that, for fee purposes, a responsive application that is considered an inconsistent application will be classified as a major, significant, or minor transaction under 49 CFR 1180.2(a)–(c), and the fee for an inconsistent application will be based on the classification of the transaction at 49 CFR 1002.2(f)(38)–(41). As an example, under this new policy, an inconsistent application classified as a major transaction for a noncarrier to acquire two or more carriers would require a fee of $889,500, as currently set forth in fee item (39)(i).

Our existing fee schedule applies a $4,700 fee to all other types of responsive applications that are filed in railroad consolidation proceedings. The Board's costs for handling the various types of transactions, ranging from trackage rights requests to construction applications, are not accurately reflected by a single-set fee. Therefore, we are modifying our fee policy as set forth at 49 CFR 1180.4(d)(4)(ii) to provide that the fee for all other responsive applications will be whatever fee is set forth in our fee schedule for that particular type of filing submitted as a responsive application. For example, if the responsive application is a petition for exemption involving trackage rights, the $5,600 fee currently set forth in fee item (40)(vi) would be assessed for that proceeding. We are retaining the general $4,700 fee for responsive applications in fee items (38)–(41)(v) to cover any type of responsive application that does not currently have a corresponding fee elsewhere in the fee schedule.

In addition to the fee application policy changes outlined above, we also are making some technical changes to part 1180. We are removing the provision at 49 CFR 1180.4(d)(4)(ii) that responsive applications that are not major transactions are presumed to be significant transactions because, under current Board practice, responsive applications may also be found to be minor transactions. We also are revising the statutory references contained in part 1180 to reflect the statutory changes resulting from the passage of the ICC Termination Act of 1995, Pub. L. 104–88 (Dec. 29, 1995) (ICCTA). And, throughout part 1180, we are changing references to the Interstate Commerce Commission and Commission to the Surface Transportation Board and Board, respectively. Finally, we are removing references in part 1180 to transactions involving the issuance of stock or the acquisition of control of motor carriers, which are matters no longer under the Board's jurisdiction.

Because these fee policy changes involve agency procedure, they are exempt from the notice and comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). With respect to the fee policy changes, we also find that notice and comment are impracticable. *See* 5 U.S.C. 553(b)(B). The Board expects to receive at least one major rail consolidation application in the immediate future. The application likely will include directly related applications, and generate responsive applications. Under the IOAA, the Board is obligated to ensure that services be self-sustaining to the extent possible. Thus, our fees need to be in place as soon as possible so that appropriate fees are received for services that will be rendered when the application is filed. Other changes are merely technical amendments to reflect the new fee policy or to conform our rules to the ICCTA. Therefore, we are adopting these changes as interim rules. However, we are providing an opportunity for public comment on these changes. After review of those comments, we will consider whether adjustments need to be made to this new policy.

We conclude that the fee and other changes adopted here will not have a significant economic impact on a substantial number of small entities. Our regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

This action will not significantly affect either the quality of human environment or the conservation of energy resources.

Notice of the interim rules adopted here will be transmitted to Congress pursuant to Pub. L. 104–121 (Mar. 29, 1996).

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: February 24, 1997.

By the Board, Chairman Morgan and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1002 and 1180, of the Code of Federal Regulations are amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.2 is amended by revising paragraphs (d)(1) and (f)(38) through (f)(41) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(d) *Related or consolidated proceedings.* (1)(i) Except as provided for in paragraph (d)(1)(ii) of this section, separate fees need not be paid for related applications filed by the same applicant that would be the subject of one proceeding.

(ii) In proceedings filed under the rail consolidation procedures at 49 CFR part 1180, the applicable filing fee must be paid for each proceeding submitted concurrently with the primary application. The fee for each type of proceeding is set forth in the fee schedule contained in paragraph (f) of this section.

* * * * *

(f) *Schedule of filing fees.*

TYPE OF PROCEEDING	Fee
* * * * *	
Part IV * * *	
(38) An application or inconsistent application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$889,500

	Fee
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,000
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	5,600
(39) An application or inconsistent application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	889,500
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	850
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	5,600
(40) An application or inconsistent application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	889,500
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	750
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	5,600
(41) An application or inconsistent application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	889,500
(ii) Significant transaction	177,900
(iii) Minor transaction	4,700
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	850
(v) Responsive application for which a fee is not otherwise provided in this schedule	4,700
(vi) Petition for exemption under 49 U.S.C. 10502	3,900

* * * * *

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

3. The authority citation for part 1180 is revised to read as follows:

AUTHORITY: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

§ 1180.0 [Amended]

4. Section 1180.0 is amended by removing the words ''49 U.S.C. 11343'' and adding in its place the words ''49 U.S.C. 11323'', removing the word ''Commission'' and adding in its place the word ''Board'' and removing the words ''Commission's Rules'' and adding in their place the words ''Board's Rules''.

§ 1180.1 [Amended]

5. Section 1180.1 is amended as follows:

a. In paragraph (a) remove the words ''Interstate Commerce Commission'' and add in their place the words ''Surface Transportation Board'' and remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

b. In the introductory text of paragraph (b) remove the word ''Commission's'' and add in its place the word ''Board's'', remove the words ''49 U.S.C. 11344'' and add in their place the words ''49 U.S.C. 11324'' and remove the words ''49 U.S.C. 10101a'' and add in their place the words ''49 U.S.C. 10101''.

c. In the introductory text of paragraph (b)(1) remove the words ''Section 11344'' and add in their place ''Section 11324'' and remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

d. In paragraph (b)(2) remove the word ''Commission'' and add in its place the word ''Board''.

e. In paragraph (c) remove the word ''Commission'' wherever it appears in that paragraph and add in its place the word ''Board'' and remove the word ''Commission's'' wherever it appears in that paragraph and add in its place the word ''Board's''.

f. In paragraphs (d) and (e) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

g. In paragraph (f) remove the word ''Commission'' wherever it appears in that paragraph and add in its place the word ''Board'' and remove the words ''(49 U.S.C. 11347)'' and add in their place the words ''(49 U.S.C. 11326)''.

h. In paragraphs (g) and (h) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

§ 1180.2 [Amended]

6. Section 1180.2 is amended as follows:

a. In the introductory text of this section remove the words ''49 U.S.C. 11343'' and add in their place the words ''49 U.S.C. 11323''.

b. In the introductory text of paragraph (b) remove the words ''49 U.S.C. 11345 (a)(2) and (c)'' and add in their place the words ''49 U.S.C. 11325 (a)(2) and (c)''.

c. In the introductory text of paragraph (d) remove the word ''Commission'' and add in its place the word ''Board'', remove the words ''49 U.S.C. 10101a'' and add in their place the words ''49 U.S.C. 10101'', remove the words ''49 U.S.C. 10505'' and add in their place the words ''49 U.S.C. 10502'', remove the words ''49 U.S.C. 10505(g)(2) and 11347'' and add in their place the words ''49 U.S.C. 10502(g) and 11326''.

d. In paragraphs (d)(1) and (d)(4) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

§ 1180.3 [Amended]

7. Section 1180.3 is amended as follows:

a. In paragraphs (d) and (e) remove the word ''Commission'' where it appears in those paragraphs and add in its place the word ''Board''.

b. In paragraph (f) remove the words ''49 U.S.C. 11343'' and add in their place the words ''49 U.S.C. 11323'' and remove the word ''Commission'' and add in its place the word ''Board''.

c. In paragraph (g) remove the words ''49 U.S.C. 10102(18)–(19)'' and add in their place the words ''49 U.S.C. 10102(5)–(6)''.

d. Section 1180.3 is further amended by revising paragraph (h) to read as follows:

§ 1180.3 Definitions.

* * * * *

(h) *Responsive applications.* Applications filed in response to a primary application are those seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings not otherwise covered). For fees for responsive applications see 49 CFR 1002.2(f)(38)–(41) and 1180.4(d)(4)(ii).

* * * * *

§ 1180.4 [Amended]

8. Section 1180.4 is amended as follows:

a. In paragraphs (a)(3) and (a)(4) and (b)(1) and (b)(2) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

b. In paragraph (c)(2)(ii) remove the words ''Interstate Commerce Commission'' and add in their place the words ''Surface Transportation Board''.

c. In paragraphs (c)(2)(iv) and (c)(2)(v) remove the word ''Commission'' and add the word ''Board'' in its place.

d. In paragraph (c)(6)(iii) remove the word ''Commission's'' and add in its place the word ''Board's'' and in paragraphs (c)(6)(iii) and (c)(6)(iv) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

e. In paragraph (c)(7)(i) remove the word ''Commission'' wherever it appears and add in its place the word ''Board'', remove the words ''49 U.S.C. 11345(b)'' and add in its place the words ''49 U.S.C. 11325(b)'', remove the words ''49 U.S.C. 11345(c)'' and add in their place the words ''49 U.S.C. 11325(c)'' and remove the words ''49 U.S.C. 11345(d)'' and add in their place the words ''49 U.S.C. 11325(d)''.

f. In paragraph (c)(7)(ii) remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

g. In paragraphs (d)(1)(ii)(D), (d)(1)(iii)(G), (d)(1)(iii)(I)(*3*), (d)(2), (d)(3), and (d)(4)(iii) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

h. In paragraphs (e)(1) and (e)(4) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

i. In paragraph (f)(1) remove the word ''Commission'' add in its place the word ''Board''.

j. In paragraph (g) remove the words ''INTERSTATE COMMISSION'' and add in its place the words ''SURFACE TRANSPORTATION BOARD'', and remove the words ''49 U.S.C. 10505(d)'' wherever they appear and add in their place the words ''49 U.S.C. 10502(d)'', remove the word ''Commission'' and add in its place the word ''Board'' and remove the word ''Commission's'' wherever its appears and add in its place the word ''Board's''.

k. In paragraph (h) remove the word ''Commission'' and add in its place the word ''Board'' and remove the word ''ICC'' wherever it appears and add in its place the word ''STB'.

l. Paragraph (i) is removed.

m. Section 1180.4 is further amended by revising paragraphs (c)(1), (c)(2)(vi) and (d)(4)(ii) and (g)(1)(iii) to read as follows:

§ 1180.4 Procedures.

* * * * *

(c) *Application.* (1) The fees for filing applications, petitions, or notices under these procedures are set forth in 49 CFR 1002.2.

(2) * * *

(i) * * *

(vi) Applicant shall file concurrently all directly related applications, *e.g.,* those seeking authority to construct or abandon rail lines, obtain terminal operations, acquire trackage rights, etc.

* * * * *

(d) * * *

(4) * * *

(ii) For filing fee purposes, a responsive application that is an inconsistent application will be classified as a major, significant, or minor transaction as provided for in § 1180.2(a)–(c). The fee for an inconsistent application will be the fee for the type of transaction involved. See 49 CFR 1002.2(f)(38)–(41). The fee for any other types of responsive applications is the fee for the particular type of proceeding set forth in 49 CFR 1002.2(f).

* * * * *

(g) * * *

(1) * * *

(iii) Other exemptions that may be relevant to a proposal under this provision are codified at 49 CFR part 1150, subpart D, which governs transactions under 49 U.S.C. 10901.

* * * * *

§ 1180.6 [Amended]

9. Section 1180.6 is amended as follows:

a. In the introductory text of paragraph (a) remove the words ''49 U.S.C. 11343'' and add in their place the words ''49 U.S.C. 11323''.

b. In paragraph (a)(2)(vi) remove the words ''49 U.S.C. 11344'' and add in their place the words ''49 U.S.C. 11324''.

c. In paragraphs (a)(4) and (a)(6) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board''.

d. In paragraph (a)(8) remove the words ''Commission's Section of Energy and Environment'' and add in their place the words ''Board's Section of Environmental Analysis''.

e. In paragraph (b)(6) remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

§ 1180.7 [Amended]

10. Section 1180.7 is amended as follows:

In the introductory text of this section remove the words ''(49 U.S.C. 11344 (b) or (d),'' and add in their place the words ''(49 U.S.C. 11324 (b) or (d),'' and remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

§ 1180.9 [Amended]

11. Section 1180.9 is amended as follows:

In the introductory text of this section remove the word ''Commission's'' and add in its place the word ''Board's'' and in paragraph (e) remove the word ''Commission'' wherever it appears and add the word ''Board''.

§ 1180.20 [Amended]

12. Section 1180.20 is amended as follows:

a. In paragraph (a)(2)(ii) remove the words ''49 U.S.C. 11343, et seq.'' and add in their place the words ''49 U.S.C. 11323, et seq.''.

b. In paragraphs (b), (c), and (d) remove the word ''Commission'' wherever it appears in those paragraphs and add in its place the word ''Board'' and in paragraph (c) remove the words ''49 U.S.C. 11347'' and add in its place the words ''49 U.S.C. 11326''.

[FR Doc. 97–5149 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 950725189–6245–04; I.D. 022697B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of king mackerel in the Florida east coast sub-zone from 50 to 25 per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The 25–fish commercial trip limit is effective 12:01 a.m., local time, March 1, 1997, through March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida east coast sub-zone of 865,000 lb (392,357 kg). In accordance with 50 CFR 622.44(a)(2)(i)(B), from the date that 75 percent of the sub-zone's commercial quota has been harvested, provided that the date occurs before March 1, until a closure of the Florida east coast sub-zone has been effected, king mackerel in or from this sub-zone in the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 25 per day. The 25–fish trip limit remains in effect through March 31, 1997, when the boundary of the Gulf migratory group of king mackerel shifts from the east coast to the west coast of Florida, unless 100 percent of the commercial quota is reached before March 31, in which case the commercial fishery for king mackerel in the Florida east coast sub-zone is closed by publication of a notification in the Federal Register.

NMFS has determined that 75 percent of the commercial quota for Gulf group king mackerel from the Florida east coast sub-zone was reached by February 28, 1997. Accordingly, a 25–fish trip limit applies to king mackerel in or from the EEZ in the Florida east coast sub-zone effective 12:01 a.m., local time, March 1, 1997.

The Florida east coast sub-zone extends from 25°20.4′ N. lat. (due east of the Dade/Monroe County, FL, boundary) to 29°25′ N. lat. (due east of the Volusia/Flagler County, FL, boundary) from November 1 through March 31.

Classification

This action is taken under 50 CFR 622.44(a)(2)(i)(B) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5303 Filed 2–27–97; 5:02 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 022697D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 27, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The TAC of Pacific ocean perch for the Eastern Aleutian District was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 3,240 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Pacific ocean perch specified for the Eastern Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,040 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5301 Filed 2–27–97; 5:02 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 022697C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Atka mackerel in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel 1997 total allowable catch (TAC) in this area has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 28, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The 1997 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 15,000 metric tons. See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1997 TAC for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea has been reached. Therefore, the Regional Administrator is requiring that further catches of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea be treated as prohibited species in accordance with § 679.21(b).

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5302 Filed 2–27–97; 5:02 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 42
Tuesday, March 4, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AAL–31]

Proposed Revision of Class E Airspace; Klawock, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Klawock, AK. The revision of the Global Positioning System (GPS) instrument approach and creation of a non-directional beacon (NDB) instrument approach to RWY 1 has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Klawock, AK.

DATES: Comments must be received on or before April 18, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–31, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–31.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace for GPS and NDB instrument approach procedures at Klawock, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

AAL AK E5 Klawock, AK [Revised]

Klawock Airport, AK
(Lat. 55°34′48″ N, long. 133°04′30″ W)
Klawock NDB/DME
(Lat. 55°34′07″ N, long. 133°04′46″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Klawock Airport and 6.5 miles north and 10 miles south of the 243° bearing from the Klawock NDB/DME extending to 16 miles southwest of the NDB/DME; and that airspace extending upward from the 1,200 feet above the surface within 6.7 miles northwest and 9.5 miles southeast of the 039° bearing from the airport extending from the airport to 6.7 miles northeast of the airport and within 6.7 miles northwest and 9.5 miles southeast of the 219° bearing from the airport extending from the airport to 32 miles southwest of the airport and 6.5 miles north and 10 miles south of the 243° bearing from the Klawock NDB/DME beginning 16 miles west of the NDB/DME and extending to 35 miles west of the NDB/DME.

* * * * *

Issued in Anchorage, AK, on February 25, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–5292 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 97N–0068]

Proposed Approach to Regulation of Cellular and Tissue-Based Products; Availability and Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of proposed regulatory approach; public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled, ''Proposed Approach to Regulation of Cellular and Tissue-Based Products.'' In addition, FDA is announcing a public meeting to solicit information and views from the interested public on the agency's proposed regulatory approach for such products. These actions are taken in response to the Administration's ''Reinventing Government'' initiative which seeks to streamline regulatory requirements to ease the burden on regulated industry, while providing adequate protection to the public health.

DATES: Written comments may be submitted at any time; however, comments should be submitted by April 17, 1997, to ensure their adequate consideration in preparing FDA's final approach to the regulation of cellular and tissue-based products.

The public meeting will be held on March 17, 1997, from 8 a.m. to 4:30 p.m. Submit written notices of participation by March 10, 1997, including a summary of the presentation, which will be submitted to the docket, and approximate time requested.

Registration is not required; however, groups are asked to limit the number of individuals attending because of the anticipated broad interest in the meeting and the limited available seating.

ADDRESSES: The public meeting will be held at the Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD 20857.

Submit written requests for single copies of the document ''Proposed Approach to Regulation of Cellular and Tissue-Based Products'' to the Office of Communication, Training and Manufacturer's Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request. The document may also be obtained by mail or by calling the CBER Voice information System at 1–800–835–4709, or 301–827–1800, or FAX at 1–888–CBER–FAX, or 301–827–3844.

Persons with access to the Internet may obtain the document using the world wide web (WWW) or bounce-back-e-mail. For WWW access, connect to CBER at ''http://www.fda.gov/cber/cberftp.html''. To receive the document by bounce-back e-mail, send a message to ''CELL TISSUE@a1.CBER.FDA.GOV''.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except individuals may submit one copy. Requests and comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch, address above, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For information regarding the meeting or to submit a notice of intent to participate: Martha A. Wells, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0967, FAX 301–827–2844.

For information regarding this document: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

FDA is announcing the availability of a document entitled ''Proposed Approach to Regulation of Cellular and Tissue-Based Products.'' This document is being issued as a part of FDA's continuing effort to reduce unnecessary burdens for industry without diminishing public health protection.

FDA has designed a new regulatory framework for cells and tissues. The document describes this new approach, which FDA believes would provide adequate protection of public health, both from the risks of transmission of communicable disease and from the risks of therapies that may be ineffective or dangerous, while enabling investigators to develop new therapies and products with as little regulatory burden as possible. The proposed approach would encompass, but not be limited to, the regulation of the following: Human tissue intended for transplantation, currently regulated under 21 part CFR 1270; demineralized bone; reproductive tissue; heart valves; peripheral blood hematopoietic stem cells; placental/umbilical cord blood hematopoietic stem cells; somatic cell therapy products; and gene therapy products.

The approach does not encompass vascularized organs or minimally-manipulated bone marrow, transfusable blood products (e.g., whole blood, red blood cells, platelets, and plasma), tissues derived from animals, products used in the propagation of cells or tissues, or products that are secreted by or extracted from cells or tissues (e.g., human milk, collagen, urokinase, cytokines, and growth factors and hormones). Such products generally raise different safety and effectiveness issues, and generally are covered by other rules, regulations, and/or

standards. The agency intends to implement this regulatory plan in a step-by-step fashion and to issue through notice and comment rulemaking new regulatory requirements.

The regulatory approach focuses on five overarching public health and regulatory concerns, which can be stated as the following questions:

(1) How can the transmission of communicable disease be prevented?

(2) What processing controls are necessary, e.g., to prevent contamination that could result in an unsafe or ineffective product, and to preserve integrity and function so that products will work as they are intended?

(3) How can clinical safety and effectiveness be assured?

(4) What labeling is necessary, and what kind of promotion is permissible, for proper use of the product?

(5) Should manufacturers notify FDA when they process and market tissue products?

With these concerns in mind, FDA categorized cells and tissues and their uses by their risk relative to each concern, so as to enable the agency to provide only that level of oversight relevant to each of the individual areas of concern. Thus, under the plan, cells and tissues would be regulated with a tiered approach based on risk and the necessity for FDA review.

In addition to making this document available, FDA is announcing a public meeting to discuss the proposed approach to the regulation of cellular and tissue-based products. At the public meeting FDA intends to present a brief overview of the proposed regulatory approach and provide an opportunity for public comments on the approach. Individuals who wish to make a presentation should contact Martha A. Wells, address above. FDA will determine the time available for presentations based on the number of participants. As time permits, those who did not submit a notice of participation will be given an opportunity to speak at the end of the meeting. FDA is requesting that those persons making oral presentations also submit their statements in writing, as described below, to ensure their adequate consideration.

Although all members of the public will have an opportunity to comment on the proposed regulations when they are published, interested persons who wish to comment on the agency's proposed approach to the regulation should submit written comments on the document, ''Proposed Approach to Regulation of Cellular and Tissue-Based Products,'' and written comments in response to the public meeting to Dockets Management Branch (address above). Written comments may be submitted at anytime, however, comments should be submitted by April 17, 1997, to assure their adequate consideration. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments and information are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Written comments on this document and comments received in response to the public meeting will be considered in determining whether revisions to the document are warranted and in preparing any future rulemaking.

Dated: February 26, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5240 Filed 2–28–97; 2:13 pm]

BILLING CODE 4160–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7210]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act.

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2.The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Arcata (City) Humboldt County.	Janes Creek	Just upstream of Samoa Boulevard	None	*7
			Just downstream of U.S. Highway 101	None	*35
Maps are available for inspection at the City of Arcata Public Works Department, 736 F Street, Arcata, California.					
Send comments to The Honorable Alice Harris, City Manager, City of Arcata, 736 F Street, Arcata, California 95521.					
Kansas	Lindsborg City	Cow Creek	Just upstream of Sheridan Street	*1,321	*1,320
	McPherson Country		At Coronado Avenue	1,334	*1,333
Maps are available for inspection at the City of Lindsborg City Hall, 101 South Main, Lindsborg, Kansas.					
Send comments to The Honorable Donald Anderson, Mayor, City of Lindsborg, P.O. Box 70, Lindsborg, Kansas 67456.					
Louisiana	Assumption Parish (unincorporated areas).	Pierre Pass at Pierre Part	At the area surrounding Lake Vevret	None	*6
Maps are available for inspection at the City Hall, 141 Highway 1008, Napoleonville, Louisiana.					
Send comments to The Honorable James Clement, Parish Manager, Assumption Parish, 141 Highway 1008, Napoleonville, Louisiana 70390.					
	St. Martin Parish (unincorporated areas).	Bayou Long	At southeastern portion of Parish, east of State Highway 70.	None	*6
Maps are available for inspection at Parish Police Jury, 415 South Main Street, St. Martinville, Louisiana.					
Send comments to The Honorable Jerard Durand, Parish Executive, St. Martin Parish, P.O. Box 9, St. Martinville, Louisiana 70582.					
Missouri	Lamar (City) Barton County.	North Fork Spring River	At confluence of Unnamed Tributary A	None	*936
			Just upstream of the Burlington Northern Railroad.	None	*940
			At Reavley Street Extended	None	*942
		Unnamed Tributary A	Approximately 1,300 feet downstream of Walnut Street.	None	*936
			Just upstream of U.S. Highway 160	None	*958
Maps are available for inspection at the City of Lamar City Hall, 1104 Broadway, Lamar, Missouri.					
Send comments to The Honorable Gerald W. Gilkey, Mayor, City of Lamar, 1104 Broadway, Lamar, Missouri 64759.					
Nebraska	Milford (City) Seward County.	Big Blue River	Approximately 1.5 miles downstream of the Burlington Northern Railroad.	*1,403	*1,401
			Approximately 3.0 miles upstream of the Burlington Northern Railroad.	*1,412	*1,413
Maps are available for inspection at the City of Milford City Hall, 505 First Street, Milford, Nebraska.					
Send comments to The Honorable Dean A. Bruha, Mayor, City of Milford, P.O. Box 13, Milford, Nebraska 68405.					
Oklahoma	Piedmont (City) Canadian and Kingfisher Counties.	Soldier Creek South Branch.	Just above dam located 0.5 mile upstream of 16th Street Northeast.	*1,169	*1,168
			Approximately 3,500 feet upstream of Piedmont Road.	None	*1,205
		Deer Creek Tributary 5A	Just upstream of Washington Street	None	*1,156
			Approximately 2,000 feet upstream of Piedmont Street.	None	*1,198

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Piedmont City Hall, 314 Edmond Road, Piedmont, Oklahoma.					
Send comments to The Honorable John Bickerstaff, Mayor, City of Piedmont, City Hall, 314 Edmond Road, Piedmont, Oklahoma 73078.					
Texas	Junction (City) Kimble County.	Llano River	Approximately 500 feet downstream of Interstate Highway 10.	*1,698	*1,695
			At confluence of North and South Llano Rivers.	*1,703	*1,698
		North Llano River	At confluence of with South Llano River ..	*1,703	*1,698
			Approximately 1,000 feet upstream of U.S. Highways 83, 290, and 377.	*1,715	*1,709
		South Llano River	At confluence with North Llano River	*1,703	*1,698
			Approximately 700 feet upstream of Flatrock Lane.	*1,716	*1,711
Maps are available for inspection at the City of Junction City Hall, 102 North Fifth Street, Junction, Texas.					
Send comments to The Honorable Keaton Blackburn, Mayor, City of Junction, 730 Main Street, Junction, Texas 76849.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 24, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–5273 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC04

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Coccoloba Rugosa (Ortegón) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service withdraws the proposed rule to list *Coccoloba* rugosa (ortegón) as threatened, pursuant to the Endangered Species Act of 1973, as amended. This plant, endemic to Puerto Rico, occurs primarily in the eastern portion of the island. It is currently known from approximately 33 localities. Based on an evaluation of data available following publication of the proposal and evaluation of the comments, the Service determines that listing of ortegón is not warranted at the present time. The Service expects to work together with the U.S. Army, U.S. Navy, U.S. Forest Service, the Puerto Rico Conservation Trust and private landowners to protect and monitor the status of the species on these lands.

ADDRESSES: The complete file for this action is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, Box 491, Boquerón, Puerto Rico 00622.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Although there are no records available concerning when *Coccoloba rugosa* was first discovered, it is known that it was widely cultivated in European botanical gardens during the nineteenth century (Proctor, pers. comm.). The species was named in 1815 and described in 1829 by the French botanist René Louiche Desfontaines from a cultivated specimen at the Botanical Garden of Paris (Little et al. 1974). This plant was reported from St. Thomas more than a century ago, but it is a doubtful record (Proctor, pers. comm.).

Coccoloba rugosa is a small evergreen tree 9 meters (30 feet) tall with a diameter of approximately 12.5 centimeters (5 inches). The bark is brown or gray and fissured, with faint rings at the nodes. The green twigs are stout, slightly flattened with longitudinal ridges. The alternate stalkless leaves are 22–60 centimeters (9–24 inches) wide, very thick, brittle, and hairless. The leaf surface is rugose, with veins deeply sunken on the upper side and prominent beneath. At the base of each leaf is a large sheath (ocrea) measuring 4–6 centimeters (1.5–2.5 inches) long. Inflorescences are terminal, 30–75 centimeters (1–2.5 feet) long with numerous small crimson-colored flowers. Male and female flowers are borne on different trees (dioecious). The red ovoid fruits are about 1 centimeter (.4 inch) long with one brown, pointed, 3-angled seed that is .5 centimeter (.2 inch) long.

Ortegón is known from approximately 5,000 individuals at 33 sites most of which occur in the subtropical moist forest life zone of northern and eastern Puerto Rico. In eastern Puerto Rico the species is known from 23 localities. More than 1,000 individuals have been located at several localities on a privately-owned tourist resort complex in the Humacao/Yabucoa area in eastern Puerto Rico. An additional 400 individuals were found at Punta Guayanez, adjacent to the tourist resort complex. The species also occurs in 10 areas in the Punta Yeguas/Punta Toro area of Yabucoa/Maunabo municipalities. Portions of the Punta Yeguas area are owned and managed by the Puerto Rico Conservation Trust. Approximately 350 individuals may occur in these areas. More than 2,000 plants have been reported from the east facing slopes of Cerro Mala Pascua at approximately 100 meters above sea level in the municipalities of Maunabo and Patillas.

In northeastern Puerto Rico *Coccoloba rugosa* has been reported from locations in Luquillo, Río Grande, the El Convento area of Fajardo, and from two locations which fall within the Caribbean National Forest (approximately 36 plants).

In northern Puerto Rico the species occurs in the limestone knolls within the San Juan metropolitan area at two localities: 6 individuals on the Fort Buchanan Army installation in the municipality of Guaynabo and one locality consisting of 2 individuals on the Sabana Seca Naval Security Group Activities facility in the municipality of Toa Baja. One population historically

reported from west of the San José lagoon in the San Juan metropolitan area was destroyed some years ago (Little et al. 1974).

Previous Federal Action

Coccoloba rugosa was included among the plants being considered as a candidate species (species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list) by the Service, as published in the Federal Register notice of review dated February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144).

The Service published a proposal to list ortegón as threatened on September 24, 1993 (58 FR 49660) based on information available at that time. The comment period on the proposal was subsequently reopened until January 24, 1995 (59 FR 60598) to allow for the collection and verification of additional information. The deadline for publishing a final listing decision was extended in the same Federal Register notice to March 24, 1995.

The processing of this action conforms with the Service's final listing priority guidance published in the Federal Register on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This rule falls under Tier 2. At this time, there are no pending Tier 1 actions.

Summary of Comments and Recommendations

In the September 24, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the ''San Juan Star'' on October 10, 1993. The Service received three letters of comment, one supported the listing (Puerto Rico Department of Natural and Environmental Resources) and the other two provided information (University of Puerto Rico at Humacao and Vazquez Environmental Services, Inc. for Palmas del Mar, Inc.) but did not indicate either support or opposition.

Nevertheless, on June 21, 1994, the Service received a letter from Vinson & Elkins, attorneys for the Palmas del Mar Properties, Inc., which provided additional information on both the distribution and abundance of *Coccoloba rugosa*. Based on this additional information the Service reopened the comment period through January 24, 1995, and requested additional information from Federal agencies, Commonwealth of Puerto Rico agencies, scientific organizations and interested parties. One letter of comment was received, from Vinson & Elkins for Palmas del Mar, Inc., which provided information similar to that in their letter of June 21, 1994. The Service has verified data provided by Palmas in both of these letters and this information has been incorporated into the supplementary information provided above.

Summary of Factors Affecting the Species

The Endangered Species Act and implementing regulations found at 50 CFR 424.17(3) provide for the basis for determining a species to be endangered or threatened and for withdrawing a proposed rule when the proposal has not been found to be supported by available evidence. The five factors described in section 4(a)(1) of the Endangered Species Act, as they apply to the withdrawal of the proposed listing of *Coccoloba rugosa* (ortegón) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

At present, *Coccoloba rugosa* is known from a total of 33 localities. Two are located on land which is managed by the U.S. Forest Service as part of the Caribbean National Forest and the species is included by the Forest Service as a sensitive species and is considered in environmental evaluations and in management practices. The species occurs on property of both the U.S. Navy and the U.S. Army, both of which are aware of the presence of the species and the need to protect it. No activities are currently proposed by these entities for the areas where the species is found. The localities at Punta Yeguas are owned and managed by the Puerto Rico Conservation Trust, a non-governmental organization dedicated to the protection of natural resources, and the organization is aware of the presence of the species on its property and the need for its protection.

More than 1,000 individuals are located within the boundaries of the Palmas del Mar, Inc. resort in Humacao, Puerto Rico. The resort has, in its most recent development expansion proposal, included all known individuals within the project area in green areas and has avoided impacting individuals. The corporation has expressed interest in protecting the species through a cooperative agreement.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Not applicable. Ortegón may be of interest as a cultivated, ornamental plant, and has been the subject of successful propagation both by private entities as well as by the Puerto Rico Department of Natural and Environmental Resources.

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

The species is considered to be a ''critical'' species by the Puerto Rico Department of Natural and Environmental Resources and is considered in evaluations done by the agency for development proposals. Listing under the Act would have offered protection through Sections 7 and 9, and through recovery planning. Nevertheless, the largest populations are on privately-owned land where few federally-funded or permitted projects are anticipated.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Although the forests of eastern Puerto Rico were dramatically affected by the passage of Hurricane Hugo in 1989, the species occurs in a sufficient number of localities that would ensure its continued survival.

Proposed Rule Withdrawal

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Coccoloba rugosa* in determining to withdraw this proposed rule. The withdrawal is based on the likelihood of the species retaining its current distribution and numbers and the anticipated cooperation on the part of both Federal and Commonwealth agencies and non-governmental and private entities in the conservation of the species.

The Service withdraws the proposed rule of September 24, 1993 (58 FR 49660) to list the *Coccoloba rugosa* as a threatened species. At present the Service does not consider this species a Candidate for listing.

References Cited

Little, E.L., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands. Second volume. U.S. Department of Agriculture Handbook No. 449. Washington, D.C. 1024 pp.

Author

The primary author of this document is Ms. Susan R. Silander (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 10, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–5156 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 960416112–7024–04; I.D. 111396A]

RIN 0648–AJ04

Atlantic Highly Migratory Species Fisheries; Tuna Fishery Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations governing the Atlantic tuna fisheries to: Divide the large school-small medium size class quota and the large medium-giant quotas of Atlantic Bluefin Tuna (ABT) into north and south regional subquotas; establish a new tuna permit program to provide for category changes, annual renewals and the collection of fees; establish authority for self-reporting for ABT landed under the Angling category; prohibit the retention of ABT less than the large medium size class by vessels permitted in the General category; prohibit all fishing by persons aboard vessels permitted in the General category on designated restricted-fishing days; and prohibit the use of spotter aircraft except in purse seine fisheries. The proposed regulatory amendments are necessary to achieve domestic management objectives for the Atlantic tuna fisheries. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed amendments.

DATES: Comments are invited and must be received on or before March 31, 1997.

ADDRESSES: Comments on the proposed rule should be sent to, William Hogarth, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Relation to Advance Notices of Proposed Rulemaking

This proposed rule responds in part to comments received subsequent to two recently published Advanced Notices of Proposed Rulemaking (ANPR) (61 FR 43518, August 23, 1996 and 61 FR 48876, September 17, 1996). Written comments were accepted over a 30 day period following publication of each ANPR. A summary of comments received follows.

NMFS received comments from several organizations and individuals in support of dividing the large school-small medium and large medium-giant size class quotas into regional subquotas. Many commenters are concerned that the high catch rates off North Carolina in the winter months preclude the opportunity to land a trophy size bluefin in other areas. Some commenters felt that this would be a more reasonable solution than delaying the Angling category season until June 1. Still others suggested that since the winter fishery off North Carolina is not historical, at least at current levels, it should not be allowed to increase if it is likely to jeopardize the ABT recovery program or preclude fisheries in traditional areas.

Some commenters wrote in support of providing NMFS the authority to close and/or reopen all or part of the Angling category in order to ensure an equitable distribution of fishing opportunities. NMFS has decided to address this option in a separate regulatory action.

Regarding a new tuna permit program, some commenters support annual renewal and the collection of a fee. Some individuals state that an annual renewal system would be an administrative burden. A few commenters suggest a higher fee for commercial and charter permits, and a few oppose the fee altogether. Several commenters support the establishment of a self-reporting system for ABT landed under the Angling category. Some are concerned about NMFS getting the resources to develop a monitoring strategy in which the constituency can have confidence.

Many commenters wrote to support issuance of one permit per vessel so that vessels could not fish in more than one quota category. In July 1995, NMFS issued regulations that precluded issuance of both a General and Angling category permit to a single vessel, but that rule also allowed General and Charter/Headboat permitted vessels to fish under the Angling category quota. The numerous comments NMFS received in support of separating the General and Angling category permits can thus be translated as requests to prohibit the retention of school ABT by General category vessels.

Some commenters wrote to support the requirement of logbooks for General category vessels.

Over 350 post cards were received that requested NMFS to prohibit fishing by persons on General category vessels on restricted-fishing days. A few commenters oppose restricted-fishing days. NMFS received 510 comments supporting prohibition of spotter planes in all handgear categories, two comments supporting the prohibition for the General category only, and one comment supporting the prohibition for the Harpoon category only.

NMFS has reviewed comments received on the two ANPRs and has considered them in developing this proposed rule.

Relation to Proposed Consolidation

A proposed rule on ''Atlantic Highly Migratory Species Fisheries; Consolidation of Regulations'' was published by NMFS on November 6, 1996, in the Federal Register at 61 FR 57361. The regulatory amendments contained in this proposed rule have been written to be consistent with the previously proposed consolidation. As proposed, the consolidated regulations significantly reorganize and condense regulatory text regarding the Atlantic tuna fisheries. In particular, regulations governing the Atlantic tuna fisheries,

currently found at 50 CFR part 285, were proposed to be combined with other regulations governing HMS under 50 CFR part 630. This proposed rule is drafted in a consistent format to enable the public to place these changes in context, as the changes will amend the proposed consolidated regulations under part 630. Copies of the proposed consolidation rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

Subsequent to the publication of the proposed consolidation, a technical amendment to 50 CFR part 285 was filed at the Office of the Federal Register (62 FR 331, January 3, 1997) to remove references to the Regional Director for the purposes of issuing Atlantic Tunas permits. This amendment was necessary to begin implementation of the automated permitting system by a private sector contractor. Therefore, regulatory text referring to permits in this proposed rule reflects changes made by that technical amendment in addition to the proposed consolidation.

Angling Category

Changes to Angling category regulations would provide more information for scientific monitoring by lengthening the fishing season. Additionally, these changes would provide more equitable geographic and temporal distribution of fishing opportunities.

Since 1992, the school size subcategory has been divided between a ''north'' and ''south'' area quota, with the division at Delaware Bay. The northern region has been allocated 53 percent of the school ABT quota and the southern region 47 percent. Given the recent and unprecedented increase in landings of large school-small medium and large medium-giant (trophy class) ABT in the early season North Carolina fishery, NMFS proposes to subdivide the large school-small medium quota and the large medium-giant quota in the same proportions and for the same geographic areas as has been specified for the school size class of ABT. This subdivision would improve scientific data collection over all regions and the entire fishing season and help ensure that the northern and southern areas have access to an equitable share of the quota. If implemented, these northern and southern area subquotas will be identified in the annual quota specifications to be published in the Federal Register at a later date.

NMFS believes that the subdivision of the quota combined with the expanded authority for interim closures, to be undertaken in a separate action, could adequately address the scientific monitoring and fishing opportunity issues without delaying the opening of the Angling category fishing season until June.

General Category

In 1995, NMFS proposed amendments to permit regulations to preclude issuance of both ABT General and Angling category permits to a single vessel (60 FR 25665, May 12, 1995). At the time, industry participants had communicated concerns to NMFS that permitting vessels in both the Angling and General categories facilitates violations of daily catch limits and results in discarding and additional mortality of bluefin tuna. These commenters maintained that under a dual permit system, vessels may continue to fish after the daily commercial trip limit is reached with the intent to capture a more valuable fish or illegally transfer fish to another vessel. It was argued that issuance of only a General or Angling category permit to a single vessel would also reduce bluefin discard mortality by separating commercial and recreational fishing activities.

In response, NMFS proposed that a permit for a single category be issued to a vessel, that persons aboard General category vessels be required to release all ABT less than 73 inches curved fork length and cease fishing once the daily limit of large medium or giant ABT is attained, and that persons aboard Angling category vessels be required to release all ABT greater than 73 inches curved fork length and cease fishing once the daily limit of school, large school, or small medium ABT is attained, except that vessels registered in the NMFS cooperative tagging program would be authorized to continue catch and release fishing.

At the 1995 public hearings, many General category permittees expressed interest in maintaining a ''mixed'' fishery, that is, alternately targeting large or small ABT depending on weather conditions and availability of fish. Based on comments received, NMFS issued final regulations (60 FR 38505, July 27, 1995) that limited permits to one category per vessel, but that also allowed General and Charter/Headboat permitted vessels to fish under the Angling category quota for ABT less than 73 inches.

Since that time, fishery participants have continued to express concerns in letters, phone calls and at public meetings about enforcement of General category rules, particularly restricted fishing days and daily catch limits, in situations where General category vessel operators could legally continue to fish under the Angling category rules. In addition, concerns have been raised about NMFS' ability to monitor the Angling category quota when General category vessels are included in the sample frame for the telephone and dockside surveys. The fact that the General and Angling quota categories do not correspond exactly with the General, Charter/Headboat and Angling permit categories has led to much confusion on the part of the regulated public. Often the General category is perceived as a commercial fishery for giant ABT when in fact there is considerable overlap with the recreational fishery for school ABT. Of the more than 13,000 General category permittees, only about 1,000 normally land and sell commercial-size ABT in a given year.

To address these concerns about quota monitoring and effective effort controls, NMFS again proposes to prohibit the retention of ABT less than the large medium size class by vessels permitted in the General category. This would effectively separate the commercial and recreational fisheries, with the exception of charter/headboats. Anglers aboard vessels permitted in the Charter/Headboat category could fish under either the daily Angling category limits or the daily General category limit as applicable on that day. The size category of the first ABT retained or possessed would determine the fishing category of the vessel for that day.

Additionally, NMFS proposes to prohibit all fishing by persons aboard vessels permitted in the General category on designated ABT restricted-fishing days. This measure is necessary to monitor and enforce the General category effort controls but is only practical if the recreational and commercial categories are separate. Fee-paying anglers aboard vessels permitted in the Charter/Headboat category could fish under the Angling category rules on designated restricted-fishing days.

The proposed requirements for General category vessels would improve distribution of fishing opportunities, decrease ABT mortality, facilitate enforcement and increase the effectiveness of the General category restricted fishing days, and improve the accuracy of catch estimates for both the Angling and General categories.

Permits and Catch Reporting

Revisions proposed for the Atlantic tunas permit and reporting program would provide for annual renewals and the collection of fees, and the authorization for a mandatory reporting

system for ABT landed under the Angling category.

In recent years, NMFS has received substantial criticism that the existing telephone and dockside surveys do not result in timely or accurate catch estimates. Revisions to the permitting and reporting systems will improve NMFS' ability to monitor the Angling category catch and effect a fair distribution of fishing opportunities. While collection of fees and annual renewals are authorized under current regulations, Atlantic tuna permits are currently provided free of charge, and have been issued for renewals on a three-year, staggered basis. Because of the extremely high volume of permit requests, NMFS previously found it cost-inefficient to collect fees and to implement an annual renewal system.

Recent changes to automate the permit program, now managed by private sector contractor, will expedite permit renewals and the processing of initial applications. Under the new system, reissued tuna permits would be required for all permit holders, regardless of the date of expiration indicated on current permits and a fee would be assessed to recover administrative costs of permit issuance.

Atlantic tunas permits issued by NMFS Northeast Regional Office, regardless of expiration date printed on the permit would have to be renewed under the new system in 1997. In addition, all new permit applications and requests for category changes would be made under the new system. NMFS has provided advance notice to vessel owners of proposed procedures to access the new permitting system via letters to individual permit holders and in notices broadcast over the Highly Migratory Species FAX network. Additionally, recorded information and instructions on the proposed new system can be obtained by phone (toll-free, 1–888–USA-TUNA) or over the internet (http://www.usatuna.com).

Permit fees are established according to the NOAA schedule for recovery of administrative costs. Such fees, previously authorized but waived by the NMFS Northeast Regional Office for administrative reasons, are now necessary to recover the cost of the permit program contract. The fee for calendar year 1997 would be set at $18.00.

The automated procedures, which include application by telephone or internet, will reduce the administrative burden on NMFS and the public, thus annual renewals are feasible. Annual renewals are necessary to maintain an accurate permit database for the purposes of quota monitoring and statistical collection.

Systems implemented for the permit program will also accommodate automated catch reporting. Automated procedures for direct telephone catch reporting by anglers would be less burdensome yet more timely and potentially more precise than current survey-based reporting. Additional reporting procedures may involve catch reports by tagging fish or using punch cards. NMFS intends to establish a pilot reporting system in 1997. If selected for this pilot program, anglers would be notified by mail of applicable reporting procedures. Depending on the feasibility and cost assessment of the direct reporting pilot study, the requirements would be expanded, as appropriate, in 1998. Such improvements in quota monitoring are necessary to meet ICCAT obligations and domestic management objectives.

Finally, Atlantic tunas permitting requirements would be extended to require permits when fishing under the provisions for tag and release. In recent years, situations have arisen where significant levels of fishing activity occur during closures of the ABT fishery. Current regulations require that tagging kits be on board the vessel and that tags be used to qualify anglers for the catch and release exemption to ABT fishery closures. Requiring vessel permits in addition to tagging kits recognizes that these situations are in fact directed fisheries for ABT and will facilitate enforcement of ABT regulations and collection of catch and effort information.

These proposed permitting and reporting requirements would improve the quality and quantity of catch information collected for stock assessments as well as the accuracy of catch estimates for both the Angling and General categories.

Spotter Aircraft

This proposed rule would prohibit the use of aircraft to assist fishing vessel operators in the location and capture of ABT, with the exception of purse seine vessels. NMFS has received numerous comments that the use of aircraft to locate bluefin tuna is contrary to the effort controls previously established for the General category and is accelerating the closure of the Harpoon category. NMFS has, on two occasions, requested specific comments on ways to mitigate the impact of aircraft use on catch rates (54 FR 29916, July 17, 1989 and 61 FR 18366, April 25, 1996).

In both cases, NMFS elected not to regulate aircraft use in the Atlantic tuna fisheries, in part because of concerns about the enforceability of spotter plane regulations. Additionally, in 1996, a voluntary agreement was signed by the majority of active tuna spotters that would limit activity to vessels using harpoon gear. NMFS recognized that the voluntary agreement warranted a trial period, but also indicated that the agency would continue to monitor the situation and would take appropriate action if necessary. Since the fishery management concerns continue to be expressed, and due to increased numbers of aircraft and vessels, safety issues are now being raised, NMFS has reconsidered action to respond to these issues.

NMFS considered combining the Harpoon and General categories as a means to resolve the catch rate and safety issues. The incentive for aircraft use would be greatly diminished if all handgear fishermen were subject to a daily catch limit. However, it is debatable whether the harpoon fishery, as it has traditionally existed, could continue under catch limits. Also, aircraft are currently used in the General category, so it is not clear how aircraft use would adapt to a single handgear category. On the other hand, fishery participants have expressed a commitment to self-policing, increasing the likelihood that a spotter aircraft regulation could be effectively enforced. Recognizing that self-policing is essential for effective enforcement, NMFS proposes to prohibit use of aircraft for ABT fishing except for assisting purse seine vessels. NMFS requests comment on this proposal and alternative measures to address the fishery management and safety issues raised by use of aircraft in the ABT fisheries.

Public Hearings

NMFS will hold public hearings to receive comments on these proposed amendments. These hearings will be scheduled at a later date and before the end of the comment period. Advanced notice of these hearings will be published in the Federal Register and via the HMS fax network, internet worldwide web site (http://www.usatuna.com), and telephone information hotline (301–713–1279).

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq*. Preliminarily, the AA has determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. In addition, a draft RIR was prepared with a preliminary finding of no significant impact.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief of Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows:

The proposed regulatory amendments are necessary to achieve domestic management objectives. Small businesses should benefit from measures to extend the fishing season and distribute fishing opportunities. Permit fees will be $18.00 per year and anglers will not incur any significant costs to comply with reporting requirements. Restricted-fishing days should augment total revenues to the General category due to increased prices from more even product flow on the export market. Approximately 30 pilots would be affected by the spotter plane prohibition. Some pilots would continue to fly for purse seine vessels. Otherwise, since pilots operate on a catch share basis lost revenue would accrue to fishing vessel operators. While over 10,000 recreational vessel owners could be restricted from selling a bluefin tuna, such sales are an infrequent occurrence. Therefore, it is concluded that these proposed actions, considered separately or in aggregate, will not have a significant impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required for these actions.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This proposed rule would implement new collections and restates or revises existing collection-of-information requirements subject to the PRA. Atlantic tuna vessel permits required under § 630.4(a) are approved under OMB Control Number 0648–0202 and are estimated at 30 minutes per permit action. Vessel reporting and recordkeeping requirements for longline vessels under § 630.5 are currently approved for swordfish and shark vessels under OMB Control Number 0648–0016 and are estimated at 15 minutes per logbook entry and 16 minutes for the attachment of tally sheets. Vessel reporting requirements for Atlantic tuna vessels permitted in the Angling category as proposed to be authorized under § 630.5 are currently approved as a voluntary collection under OMB Control Number 0648–0052 and are estimated at 8 minutes per telephone interview and 5 minutes per dockside interview.

Although permitting and reporting requirements have been approved by OMB for these fisheries, this rule would modify or extend these information collections. First, the new permit system would require reissuance of all vessel permits. NMFS estimates that up to 20,000 permit holders may be affected at an estimated 6 minutes per phone call. Second, commercial tuna vessel operators, who do not otherwise submit logbooks under swordfish or shark fishery requirements could be selected for the pelagic logbook reporting program. Purse seine, harpoon or handgear vessels could be affected. NMFS would request OMB approval prior to selecting vessels from these categories. Finally, ABT catch reporting by recreational anglers would be conducted by direct phone call rather than by interview. Catch reports are estimated at 5 minutes per toll-free phone call. While automated catch reporting may reduce the burden to individual respondents, the direct reporting program, if fully implemented, would increase the number of respondents. NMFS has requested that OMB review these proposed modifications to information collections. If implemented, the effectiveness of these collections will be delayed, pending OMB approval.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS issued a biological opinion under the Endangered Species Act on July 5, 1989, indicating that the level of impact and marine mammal takes in the Atlantic tuna fisheries is not likely to jeopardize the continued existence of any sea turtle species or any marine mammal populations. NMFS has since reinitiated consultation on the Atlantic highly migratory species fisheries under section 7 of the Endangered Species Act. This consultation will consider new information concerning the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: February 19, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 as proposed to be amended at 61 FR 57361, November 6, 1996, is further proposed to be amended as follows:

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

2. In § 630.2, definitions for ''aircraft'' and ''restricted-fishing day'' are added to read as follows:

§ 630.2 Definitions.

* * * * *

Aircraft means any contrivance used for flight in air.

* * * * *

Restricted-fishing day means a date, after the commencement date of the General category fishing season and before the effective date of fishery closure on attaining the annual quota, designated by the Director under § 630.29(a)(1)(i) upon which no fishing may be conducted by persons aboard vessels permitted in the Atlantic tunas General category.

* * * * *

3. In § 630.4, paragraph (a)(2)(v), the introductory text of paragraph (c) and paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(v), and paragraphs (d), (e), (f), (i) and (k) are revised to read as follows:

§ 630.4 Permits and fees.

(a) * * *

(2) * * *

(v) *Change of category*. Except for purse seine vessels for which a permit has been issued under paragraph (a)(2)(iv) of this section, an owner may change the category of the vessel's Atlantic tunas permit to another category a maximum of once per calendar year by application on the appropriate form to NMFS before May 15. After May 15, the vessel's permit category may not be changed to another

category for the remainder of the calendar year, regardless of any change in the vessel's ownership.

* * * * *

(c) *Application.* A vessel owner or dealer applying for a permit under paragraph (a) or (b) of this section must submit a completed permit application as indicated in the application instructions at least 30 days before the date on which the applicant desires to have the permit made effective.

(1) *Vessel permits.* (i) Applicants must provide all information concerning vessel, gear used, fishing areas, and fisheries participation, including sworn statements relative to income requirements and permit conditions, as indicated in the instructions on the application form.

* * * * *

(iii) NMFS may require the applicant to provide documentation supporting any sworn statements required under this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (l) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

* * * * *

(v) Applicants must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

* * * * *

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, a permit shall be issued within 30 days of receipt of a completed application. An application is complete when all requested forms, information, sworn statements and supporting documentation have been received and the applicant has submitted all reports required under this part.

(2) The applicant will be notified of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under paragraph (a) or (b) of this section remains valid until it expires or is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904. Permits expire on the date indicated on the permit or when any of the information previously submitted on the application changes. Permits must be renewed upon expiration. Renewal of permits must be initiated at least 30 days before the expiration date to avoid a lapse in validity.

(f) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee shall be determined, at least biannually, in accordance with the procedures of the NOAA Finance Handbook, available from the Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with application or renewal instructions. The required fee must accompany each application or renewal. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

* * * * *

(i) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under paragraph (a) or (b) of this section, the vessel owner or dealer must report the change by phone (1–888–USA-TUNA) or internet (http://www.usatuna.com). In such case, a new permit will be issued to incorporate the new information. For certain informational changes, NMFS may require supporting documentation before a new permit will be issued or may require payment of an additional fee. Permittees will be notified of such requirements, if applicable, when reporting changes. The permit is void if any change in the information is not reported within 15 days.

* * * * *

(k) *Replacement.* Replacement permits will be issued when requested by the owner or authorized representative. A request for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (f) of this section, may be charged for issuance of the replacement permit.

* * * * *

4. In § 630.5, the first sentence in each of paragraphs (a)(1) and (2) are revised, and a new paragraph (a)(4) is added to read as follows:

§ 630.5 Recordkeeping and reporting.

(a) *Vessels*—(1) *Logbooks.* If selected and so notified in writing by NMFS, the owner and/or operator of a vessel for which a permit has been issued under § 630.4(a), must ensure that a daily logbook form is maintained of the vessel's fishing effort, catch, and disposition on forms available from the Science and Research Director. * * *

(2) *Tally sheets.* The owner and/or operator of a vessel for which a permit has been issued under § 630.4(a), and who is required to submit a logbook under paragraph (a)(1) of this section, must ensure that copies of tally sheets are submitted for all fish offloaded and sold after a fishing trip. * * *

* * * * *

(4) *Angling reports.* Angling category permittees selected by the Director are required to report all ABT landed under the Angling category quota. Permittees will be notified in writing by the Director of their selection and applicable reporting requirements and procedures. Reporting procedures shall be established by the Director in cooperation with the States, and may include telephone, dockside or mail surveys, mail-in or phone-in reports, tagging programs, or mandatory ABT check-in stations. A statistically based sample of the Angling category permittees may be selected for specific reporting programs.

* * * * *

5. In § 630.21, paragraph (f) is added to read as follows:

§ 630.21 Gear restrictions.

* * * * *

(f) *Aircraft.* Other than for a vessel holding a valid permit in the Purse Seine category under § 630.4(a)(2), locating, fishing for, catching, taking, retaining or possessing ABT by means, aid, or use of any aircraft is prohibited.

6. In § 630.28, paragraphs (b)(5) and (e)(1) are revised to read as follows:

§ 630.28 Quotas and closures.

* * * * *

(b) * * *

(5) *Inseason adjustments.* NMFS may make transfers between fishing categories or allocate any portion of the Reserve held for inseason adjustments to any category of the fishery, or to account for harvest by persons conducting research activities authorized under § 630.1(b)(2) in accordance with § 630.32. NMFS will publish notification of any inseason adjustment amount in the Federal Register. Before making any such allocation between categories or from the Reserve, NMFS will consider the following factors:

(i) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock.

(ii) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(iii) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

(iv) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

* * * * *

(e) *Closures*—(1) *Atlantic bluefin tuna*. (i) NMFS will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, NMFS will project a date when the catch of Atlantic bluefin tuna will equal any quota established under this section, and will file notification with the Office of the Federal Register stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

(ii) Upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, and the catch rate in one area may preclude anglers in an another area from a reasonable opportunity to harvest its historical share of the quota, NMFS may close all or part of the Angling category or reopen it at a later date, to ensure that ABT have migrated to the identified area before the entire Angling category quota is reached. In determining the need for any such temporary or area closure, NMFS will consider the applicable factors referenced under § 630.28(b)(5).

* * * * *

7. In § 630.29, paragraph (a)(1)(iv) is removed and paragraphs (a)(1)(i) and (a)(5) are revised to read as follows:

§ 630.29 Catch limits.

(a) *Atlantic bluefin tuna*—(1) *General category*. (i) From the start of each fishing year, except on designated restricted- fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under § 630.4(a)(2). On designated restricted-fishing days, persons aboard such vessels may not fish. NMFS will publish in the Federal Register a schedule of designated restricted-fishing days applicable for that fishing season.

* * * * *

(5) *Charter/Headboat category*. (i) Persons aboard vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the daily catch limit in effect on that day for school, large school, and small medium ABT applicable to the Angling category or the daily catch limit in effect on that day for large medium and giant ABT applicable to the General category. The size category of the first ABT retained or possessed shall determine the fishing category applicable to the vessel that day. Persons aboard the vessel may possess ABT in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day for the Angling or General category, as applicable. School, large school, and small medium ABT landed by persons aboard Charter/Headboat category vessels are counted against the Angling category quota. Large medium and giant ABT landed by persons aboard Charter/Headboat category vessels are counted against the General category quota if landed under paragraph (a)(5)(ii) of this section, or the Angling category quota, if landed under paragraph (a)(5)(iii) or (iv) of this section.

(ii) When commercial fishing by vessels for which General category permits have been issued under § 630.4(a)(2) is authorized, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the daily catch limit in effect for the General category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(1) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained on authorized commercial fishing days, persons aboard vessels for which Charter/Headboat category permits have been issued under § 630.4(a)(2) must cease fishing and the vessel must proceed to port. Large medium or giant ABT landed under this paragraph may be sold.

(iii) When the General category fishery is closed, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(4)(ii) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

(iv) At any time when fishing in the Gulf of Mexico, operators of vessels for which Charter/Headboat category permits have been issued under § 630.4(a)(2) may not fish for, catch, retain or possess bluefin tuna except that large medium and giant bluefin tuna taken incidental to fishing for other species may be retained subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(4)(ii) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

8. In § 630.30, paragraph (a)(1) is revised to read as follows:

§ 630.30 Catch and release.

(a) *Atlantic bluefin tuna*. (1) Notwithstanding other provisions of this part, a person aboard a vessel permitted under § 630.4(a)(2), other than a person aboard a vessel permitted in the General category on a designated restricted-fishing day, may fish for Atlantic bluefin tuna under a tag and release program, provided the person tags all Atlantic bluefin tuna so caught with tags issued or approved by NMFS under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. If NMFS-issued or NMFS-approved tags are not on board a vessel, all persons aboard that vessel are deemed to be ineligible to fish under the provisions of this section.

* * * * *

9. In § 630.70, paragraphs (a)(8) and (a)(78) are revised and paragraphs (a)(101) and (a)(102) are added to read as follows:

§ 630.70 Prohibitions.

* * * * *

(8) Fish for, catch, possess, or retain any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued a permit for the Angling or Charter/Headboat categories under § 630.4(a)(2)(i), or a permit for the Purse Seine category under § 630.4(a)(2)(i) as authorized under § 630.26(a)(2).

* * * * *

(78) Fish for, catch, or possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 630.29(a), except that fish may be caught and released under the provisions of § 630.30.

* * * * *

(101) For persons aboard vessels permitted in the General category under

§ 630.4(a)(2), engage in fishing for any species on designated restricted-fishing days.

(102) Fish for, catch, possess or retain, or attempt to fish for, catch, possess or retain any ABT by means, aid, or use of any aircraft, unless holding a valid permit in the Purse Seine category under § 630.4(a).

[FR Doc. 97–4587 Filed 2–27–97; 4:45 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 42
Tuesday, March 4, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of l995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of the program for Community Facilities loans.

DATES: Comments on this notice must be received by May 5, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Sharon R. Douglas, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 3222, l400 Independence Avenue SW., Washington, DC 20250–3222. Telephone (202) 720–1506.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR l956, Subpart C, Debt Settlement—Community and Business Programs.

OMB Number: 0575–0124.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract

The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations and Indian tribes for the development of community facilities for public use in rural areas.

The Economic Opportunity Act of l964, Title 3 (Pub.L. 88–452), authorizes Economic Cooperative loans to assist incorporated and unincorporated associations provide to low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Water and Waste Disposal program is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) to provide basic human amenities, alleviate health hazards, and promote the orderly growth of the rural areas of the Nation by meeting the need for new and improved water and waste disposal systems.

The Business and Industry program is authorized by Section 310 B (7 U.S.C. 1932) (Pub.L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control.

The Food Security Act of 1985, Section 1323 (Pub.L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Powerplant and Industrial Fuel Use Act of 1978, Section 601 (42 U.S.C. 8401), authorizes Energy Impact Assistance Grants to states, councils of local government, and local governments to assist areas impacted by coal or uranium development activities. Assistance is for the purposes of growth management, housing planning, and acquiring and developing sites for housing and public facilities.

The Consolidated Farm and Rural Development Act, Section 310B(c) (7 U.S.C. 1932 (c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, Section 310B(f)(i) (7 U.S.C. 1932 (c)), authorizes Rural Technology and Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural technology or cooperative development.

The Farm Ownership loan program is authorized by the Consolidated Farm and Rural Development Act, Pub.L. 91–229, to make insured loans to Indian Tribes or tribal corporations within tribal reservations and Alaskan communities. The Act also gives Farmer Programs the authority to make loans for grazing, other irrigation and drainage projects, and association irrigation and drainage loans.

The debt settlement program authorizes debt restructuring for the above programs. The debt restructuring actions would be available to the borrowers who are delinquent due to no fault of their own and who have acted in good faith in connection with their loans. These servicing actions are: writing down of principal and interest, deferral, loan consolidation and adjustment of interest rates and terms. However, any debt restructuring must result in a net recovery to the Federal Government during the term of the loan as restructured that would be more than or equal to the net recovery to the Federal Government from an involuntary liquidation or foreclosure on the property securing the loan.

The information collected under this program is considered the minimum necessary to conform to the requirements of the regulation established by law. Also, the information collected is considered to be the minimum necessary to ensure that the intent of the law is achieved.

Information will be collected by the field offices from applicants and borrowers. Under the provisions of this regulation, the information collected will primarily be financial data.

Failure to collect this information could result in improper servicing of these loans.

Estimate of Burden: 8.14 hours per response.

Respondents: Public Bodies and nonprofit organizations.

Estimate Number of Respondents: 17.

Estimate Number of Responses per Respondent: 3.23.

Estimate Total Annual Burden on Respondents: 448.

Copies of this information collection can be obtained from Barbara Williams,

Regulations and Paperwork Management Division, at (202) 720–9734.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the function of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 9743, 1400 Independence Avenue SW., Washington, DC 20250–9743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 5, 1997.

Jan E. Shadburn,

Acting Administrator, Rural Housing Service.

Dated: February 12, 1997.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

Dated: February 18, 1997.

Wally B. Beyer,

Administrator, Rural Utilities Service.

Dated: February 20, 1997.

Grant Buntrock,

Administrator, Farm Service Agency.

[FR Doc. 97–5244 Filed 3–3–97; 8:45 am]

BILLING CODE 3410–XV–U

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request Collection of Information for the Quality Control Sampling Plans Required by Part 275 of the Food Stamp Program's Regulations on Quality Control

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection for the Quality Control Sampling Plans required by Part 275 of the Food Stamp Program's regulations on Quality Control.

DATES: Written comments must be submitted on or before May 5, 1997.

ADDRESSES: Send comments and requests for copies of this information collection to: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: John Knaus, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Regulations, Part 275—Quality Control.

OMB Number: 0584–0303.

Form Number: Not Applicable.

Expiration Date: 07/31/97.

Type of Request: Extension of a currently approved collection.

Abstract: As part of the Performance Reporting System, each State agency is required to provide a systematic means of determining the accuracy of household eligibility and measuring the extent to which households receive the food stamp allotment to which they are entitled. The quality control system is designed to provide a basis for determining each State agency's error rates. Quality control data serves as an objective measure of program operations at the State level and is essential to the determination of a State agency's entitlement to an increased Federal share of its administrative costs or liability for sanctions.

To help ensure that quality control data is reliable and unbiased, Section 275.11(a) requires each State agency to submit a quality control sampling plan to the Food and Consumer Service for approval. The sampling plan is a part of the inclusive State Plan of Operation.

Affected Public: State or local governments.

Estimated Number of Respondents: 53.

Estimated Time per Response: 5 Hours.

Estimated Total Annual Burden: 266.

Dated: February 26, 1997.

William E. Ludwig

Administrator, Food and Consumer Service.

[FR Doc. 97–5278 Filed 3–3–97; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on March 20, 1997, at the Red Lion Inn in Kelso, Washington, near Interstate 5 at Exit No. 39. The meeting will begin at 9 a.m. and continue until 4:30 p.m.

The purpose of the Advisory Committee meeting is to utilize the Province Health Matrix and Watershed Analyses to advise on proposed timber sales for the Cowlitz, Lewis, Wind River, and White Salmon Basins. Agenda items to be covered include: (1) 1997–1998 Timber Sale Program, with in-depth presentations on the Cowlitz Basin, (2) Updates from Subcommittees on the Social and Economic Indicators of Basin Health, Field Trips and Committee Work Priorities, and (3) Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 750–5091, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., PO Box 8944, Vancouver, WA 98668–8944.

Dated: February 26, 1997.
Ted C. Stubblefield,
Forest Supervisor.
[FR Doc. 97–5234 Filed 3–3–97; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent To revoke antidumping duty orders and findings and To terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of March 1997.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Australia
Canned Bartlett Pears
A–602–039
38 FR 7566
March 23, 1973
Contact: Mathew Rosenbaum at (202) 482–0198

Canada
Construction Castings
A–122–503
51 FR 17220
March 5, 1986
Contact: Laurel LaCivita at (202) 482–4470

Chile
Standard Carnations
A–337–602
52 FR 8939
March 20, 1987
Contact: Lyn Johnson at (202) 482–5287

France
Brass Sheet & Strip
A–427–602
52 FR 6995
March 6, 1987
Contact: Thomas Killiam at (202) 482–2704

Israel
Oil Country Tubular Goods
A–508–602
52 FR 7000
March 6, 1987
Contact: Michael Heaney at (202) 482–4475

Italy
Certain Valves and Connections of Brass, for Use in Fire Protection Equipment
A–475–401
50 FR 8354
March 1, 1985
Contact: Leon McNeill at (202) 482–4236

Italy
Brass Sheet & Strip
A–475–601
52 FR 6997
March 6, 1987
Contact: Tom Killiam at (202) 482–2704

Japan
Televisions
A–588–015
36 FR 4597
March 10, 1971
Contact: Sheila Forbes at (202) 482–5253

Sweden
Brass Sheet & Strip
A–401–601
52 FR 6998
March 6, 1987
Contact: Tom Killiam at (202) 482–2704

Taiwan
Light-Walled Welded Rectangular Carbon Steel Tubing
A–583–803
54 FR 12467
March 27, 1989
Contact: Thomas O. Barlow at (202) 482–0410

The People's Republic of China
Chloropicrin
A–570–002
49 FR 10691
March 22, 1984
Contact: Andrea Chu at (202) 482–4794

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of March 1997. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

(Dated): February 25, 1997.
Richard W. Moreland,
Acting Deputy Assistant Secretary for AD/CVD Enforcement.
[FR Doc. 97–5230 Filed 3–3–97; 8:45 am]
BILLING CODE 3510–DS–P

[A–533–809]

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper reviews.

SUMMARY: On November 25, 1996, the Department of Commerce (the Department) published the preliminary results of its new shipper reviews of the antidumping duty order on certain stainless steel flanges (SSF) from India (61 FR 59861). These reviews cover exports of this merchandise to the United States by two manufacturer/exporters, Isibars Ltd. (Isibars) and Patheja Forgings and Auto Parts Ltd. (Patheja), during the period September 1, 1995 through February 29, 1996.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from respondent Patheja concerning alleged clerical errors. The review indicates the existence of a dumping margin for Patheja for this period.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

The antidumping duty order on SSF from India was published February 9, 1994 (59 FR 5994). On November 25, 1996, the Department published in the Federal Register the preliminary results of these new shipper reviews of the antidumping duty order on SSF from India (61 FR 59861). The Department has now completed these new shipper reviews in accordance with section 751 of the Act.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The reviews cover two Indian manufacturer/exporters, Isibars and Patheja, and the period September 1, 1995 through February 29, 1996.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Patheja on December 10, 1996, concerning alleged clerical errors.

Comment 1: Patheja argues that it provided audited figures on August 22, 1996, to update provisional data submitted earlier, but the Department relied instead on the earlier, provisional data for the preliminary results. Patheja argues that the Department should revise its analysis using the audited figures pertaining to cost of manufacturing, general and administrative expenses, interest expenses and profitability.

Department's Position: We agree and have revised our analysis accordingly.

Comment 2: Patheja argues that the Department inadvertently added vendor charges, a component of material costs, twice, resulting in double counting of those charges.

Department's Position: We agree and have revised our analysis accordingly.

Comment 3: Patheja argues that the Department failed to deduct the value of scrap metal from the cost of manufacturing.

Department's Position: We agree and have revised our analysis accordingly.

Comment 4: Patheja argues that the Department used as an ending date for the credit expense period for U.S. sales the date of October 11, 1996, whereas the correct date of payment is October 30, 1996.

Department's Position: We agree and have revised our analysis accordingly.

Final Results of Reviews

As a result of our analysis of the comments received, we have determined that the following weighted-average dumping margins exist for Isibars and Patheja:

Manufacturer/exporter	Period	Margin (percent)
Isibars	9/1/95–2/29/96	0.00
Patheja	9/1/95–2/29/96	1.61

Individual differences between the U.S. price and normal value may vary from the above percentages. The Department shall instruct the Customs Service to liquidate all appropriate entries, and to assess no antidumping duties on Isibars' entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The rate for the reviewed firms will be as listed above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the

manufacturer is, the cash deposit rate will be that rate established for the manufacturer of the merchandise in earlier reviews or the original investigation, whichever is the most recent; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 162.14 percent, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR § 353.22(h).

Dated: February 24, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5229 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE ADMINISTRATION

[A–489–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Cameron Werker, or Fabian Rivelis, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1776, (202) 482–3874, or (202) 482–3853, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Final Determination

We determine that certain steel concrete reinforcing bars (rebar) from Turkey are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in § 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Certain Steel Concrete Reinforcing Bars from Turkey*, 61 FR 53203, (Oct. 10, 1996)), the following events have occurred:

In October 1996, we issued supplemental sales and cost questionnaires to Colakoglu Metalurji A.S. (Colakoglu), Ekinciler Demir Celik A.S. (Ekinciler), and Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas), and a supplemental cost questionnaire to Izmir Metalurji Fabrikasi Turk A. S. (Metas). Responses to these questionnaires were also received in October 1996.

From October through December 1996, we verified the questionnaire responses of Colakoglu, Ekinciler, Habas, and Metas. We also verified that the following companies had no shipments of subject merchandise to the United States during the period of investigation (POI): Cebitas Demir Celik Endustrisi A.S., Cukurova Celik Endustrisi A.S., Icdas Istanbul Celik ve Demir Izabe Sanayii A.S., Diler Demir Celik Endustrisi ve Ticaret A.S., Diler Dis Ticaret A.S., and Yazici Demir Celik Sanayi ve Ticaret A.S.

On January 14 and 27, 1997, the Department requested that Colakoglu and Habas submit new computer tapes to include data corrections identified through verification. This information was submitted on January 17 and 29, 1997, respectively.

Petitioners (*i.e.*, AmeriSteel Corporation and New Jersey Steel Corporation) and three of the respondents (*i.e.*, Colakoglu, Ekinciler, and Habas) submitted case briefs on January 22, 1997, and rebuttal briefs on January 27, 1997. No case or rebuttal briefs were received from any other interested party.

Scope of Investigation

The product covered by this investigation is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is January 1, 1995, through December 31, 1995.

Facts Available

One of the respondents in this case, Izmir Demir Celik Sanayi A.S. (IDC), failed to respond completely to the Department's requests for information. Specifically, IDC submitted a response to Sections A, B, and C of the May 9 questionnaire, but did not provide any subsequent information, including a response to the supplemental sales questionnaire and the cost of production (COP) questionnaire.

On August 12, 1996, IDC informed the Department that it would not be able to provide any additional information in a timely manner and requested that the Department use the information already on the record in its analysis. However, we were unable to perform any analysis for IDC without a COP response because COP data is an essential component in our margin calculations. We afforded IDC an opportunity to request additional time for completion of its responses. However, IDC neither requested an extension nor submitted any additional data.

Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because IDC

failed to respond to the Department's supplemental and COP questionnaires and because that failure is not overcome by the application of subsections 782(c)(1) and (e) of the Act, we must use facts otherwise available with regard to IDC.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870. IDC's failure to reply to the Department's requests for information demonstrates that IDC has failed to act to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted with regard to IDC. As facts otherwise available, we are assigning to IDC the highest margin stated in the notice of initiation, 41.8 percent.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Corroborative means that the secondary information to be used has probative value. *See* SAA at 870. In analyzing the petition, the Department reviewed all of the data the petitioners relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. *See* Memorandum to the File from Case Analysts, dated March 26, 1996. These estimated dumping margins were based on a comparison of a home market price list to: (1) A contracted price to a U.S. customer; and (2) an offer of sale to a U.S. customer. The estimated dumping margins, as recalculated by the Department, ranged from 27.4 to 41.8 percent. The Department corroborated all of the secondary information from which the margin was calculated during our pre-initiation analysis of the petition to the extent appropriate information was available for this purpose at that time. For purposes of this determination, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it continued to be of probative value.

Fair Value Comparisons

Petitioners have requested that the Department and the ITC find that there is a regional industry [1] and perform the requisite analysis, in accordance with § 771(4)(C) of the Act. Section 736(d)(1) of the Act directs the Department to assess duties only on the subject merchandise of the specific exporters and producers that exported the subject merchandise for sale into the region concerned during the POI. In our notice of initiation we indicated that the petition had met the requirements of § 771(4)(C) and § 732(c)(4)(C) of the Act. However, because respondents were not able to provide requested information on sales which were ultimately made in the region, we have not limited our analysis in the LTFV investigation to only shipments entering ports located in the region. We will again attempt to collect this information during any subsequent administrative reviews, in the event that an antidumping duty order is issued in this case.

To determine whether sales of the subject merchandise by Colakoglu, Ekinciler, Habas, and Metas to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Regarding Habas, we calculated NV based on constructed value (CV) in accordance with § 773(a)(4) of the Act because Habas's home market sales did not provide an appropriate basis for calculating NV. *See* the ''Normal Value'' section of this notice, below, for further discussion.

Regarding Metas, we calculated NV on the basis of CV because we found no home market sales at prices above COP. *See* the ''Normal Value'' section of this notice, below, for further discussion.

Regarding Colakoglu and Ekinciler, as set forth in § 773(a)(1)(B)(i) of the Act, we calculated NV based on sales at the same level of trade as the U.S. sale. In accordance with § 777A(d)(1)(A)(i) of the Act, we compared weighted-average EPs to weighted-average NVs. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics, level of trade, and significant inflation.

(i) Physical Characteristics

In accordance with § 771(16) of the Act, we considered all products covered by the description in the *Scope of Investigation* section, above, produced in Turkey and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Regarding Colakoglu and Ekinciler, where there were no sales of identical merchandise in the home market pursuant to § 771(16)(B) of the Act, to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics listed in Appendix III of the Department's antidumping questionnaire.

(ii) Level of Trade

In its preliminary determination, the Department found that no differences in level of trade existed between home market and U.S. sales for any participating respondent. Our findings at verification confirmed that the respondents performed essentially the same selling activities for each reported home market and U.S. marketing stage. Accordingly, we determine that all price comparisons are at the same level of trade and that an adjustment pursuant to § 773(a)(7)(A) of the Act is unwarranted.

(iii) Significant Inflation

Turkey experienced significant inflation during the POI, as measured by the Wholesale Price Index (WPI) published by the International Monetary Fund (IMF) in the *International Financial Statistics.* Accordingly, to avoid the distortions caused by the effects of significant inflation on prices, we calculated EPs and NVs on a monthly-average basis, rather than on a POI-average basis. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30315 (June 14, 1996) (*Pasta*).

Export Price

We calculated EP, in accordance with subsections 772 (a) and (c) of the Act, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and where constructed export price was not otherwise warranted based on the facts of record.

A. Colakoglu

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight, dunnage expenses, lashing expenses, loading charges, despatch expenses (which included an adjustment for revenue that was realized on a contractual agreement between Colakoglu and its ocean freight

[1] The region identified by the petitioners includes Maine, New Hampshire, Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, New York, Pennsylvania, Delaware, Florida, Georgia, Louisiana, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, the District of Columbia, and Puerto Rico.

carrier), demurrage expenses, and ocean freight, where appropriate, in accordance with § 772(c)(2)(A) of the Act. We disallowed an adjustment to EP for wharfage revenue and freight commissions earned by an affiliated party because we were unable to make a corresponding deduction for the affiliate's costs (*see* Comment 8).

We based our calculations on the revised U.S. sales database submitted by Colakoglu after verification. We revised the amount of despatch revenue received on one U.S. sale based on our findings at verification because this correction was not incorporated into the revised sales listing.

B. Ekinciler

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight, warehousing expenses, loading charges, tallying expenses, forklift expenses, dunnage expenses, demurrage expenses (which included an adjustment for despatch revenues), ramneck tape expenses, customs fees, detention expenses, stevedoring expenses, wharfage expenses, overage insurance, and ocean freight, where appropriate, in accordance with § 772(c)(2)(A) of the Act. We disallowed an adjustment to EP for agency fee revenue and freight commissions earned by an affiliated party because we were unable to make a corresponding deduction for the affiliate's costs (*see* Comment 8).

We made the following corrections to the data reported by Ekinciler, based on our findings at verification: a) we revised the price and quantity for two U.S. sales; b) we revised the control number used for matching purposes for certain U.S. sales; c) we revised the following movement expenses for certain U.S. sales: international freight, forklift expenses, inland freight from plant to port, overage insurance, and pre-sale warehouse expenses; and d) we revised bank fees for two U.S. sales. In addition, we disallowed Ekinciler's claim for dunnage revenue on certain U.S. sales (*see* Comment 13).

C. Habas

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight, dunnage expenses, despatch expenses (which included an adjustment for revenue that was realized on a contractual agreement between Habas and its customer), brokerage and handling, demurrage expenses, customs fees, ocean freight, and marine insurance, where appropriate, in accordance with § 772(c)(2)(A) of the Act. We disallowed an adjustment to EP for freight revenue earned by an affiliated party because we were unable to make a corresponding deduction for the affiliate's costs (*see* Comment 8). We revised the amounts reported for demurrage, brokerage, international freight, marine insurance, and export fees for certain vessels based on our findings at verification.

D. Metas

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight, lashing expenses, brokerage and handling, demurrage expenses (which included an upward adjustment for revenue that was realized on a contractual agreement between Metas and its ocean freight carrier), and ocean freight, where appropriate, in accordance with § 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with § 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

Regarding Habas, however, we did not use home market sales as the basis for NV. Rather, we based NV on CV in accordance with § 773(a)(4) of the Act. In its questionnaire responses, Habas notified the Department that its home market was a residual market and that it did not maintain the records necessary to accurately report the unique physical characteristics of its home market products. We examined Habas's record-keeping practices at verification and confirmed that Habas was unable to report specific product characteristics for its home market database. Consequently, we are unable to use these products to make price-to-price comparisons according to the matching criteria listed in Appendix III of the Department's questionnaire.

Regarding Ekinciler and Metas, these respondents made sales of subject merchandise to affiliated parties in the home market during the POI. Consequently, we tested these sales to ensure that, on average, they were made at ''arm's-length'' prices, in accordance with 19 CFR 353.45. To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, rebates, and packing. Based on the results of that test, we discarded from each respondent's home market database all sales made to an affiliated party that failed the ''arm's-length'' test.

Based on the cost allegation submitted by petitioners, the Department determined, pursuant to § 773(b) of the Act, that there were reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise. Consequently, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A), in accordance with § 773(b)(3) of the Act. As noted above, we determined that the Turkish economy experienced significant inflation during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that respondents submit monthly COP figures based on the current production costs incurred during each month of the POI. *See Pasta*.

We used the respondents' monthly COP amounts, adjusted as discussed below, and the WPI from the IMF (*see* Comment 2) to compute an annual weighted-average COP for each respondent during the POI. We compared the weighted-average COP figures to home market sales of the foreign like product, as required under § 773(b) of the Act, in order to determine whether these sales had been made at prices below their COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and packing expenses. We did not deduct selling expenses from the home market price because these expenses were included in the SG&A portion of COP.

In determining whether to disregard home market sales made at prices below the COP, we examined: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

Where 20 percent or more of a respondent's sales of a given product during the POI were at prices below the COP, we found that sales of that model were made in ''substantial quantities,'' and within an extended period of time, in accordance with § 773(b)(2) (B) and (C) of the Act. To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit COP at the time of the sale were above the weighted-average per-unit COP for the POI, in accordance with § 773(b)(2)(D) of the Act. If prices that were below cost at the time of sale were above the weighted-average cost for the POI, we included such prices in determining NV (for all respondents except Habas). Otherwise, we disregarded them.

In accordance with § 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs, except as noted in the company-specific sections below. In accordance with § 773(e)(2)(A) of the Act, where possible, we based SG&A expenses and profit on the amounts incurred and realized by each of these companies in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. In addition, to account for the effects of inflation on costs, we calculated each respondent's CV based on the methodology described in the calculation of COP above. Company-specific calculations are discussed below.

A. Colakoglu

We relied on the respondent's COP and CV amounts except in the following instances:

(1) We adjusted Colakoglu's submitted scrap cost to include the transfer prices it paid to an affiliated company for freight service because the transfer prices were made at arm's length and represent the actual cost to Colakoglu (*see* Comment 11).

(2) Colakoglu based its reported SG&A and financing expense rates on amounts contained in the company's tax return. However, because the Department prefers to use figures from audited financial statements, we revised the SG&A and financing expense rates for COP and CV using amounts reported in Colakoglu's 1995 audited financial statements.

(3) We indexed the submitted monthly SG&A and financing expenses using the IMF's WPI (*see* Comment 2).

(4) We included translation losses in financing expense (see Comment 3).

(5) Because Colakoglu did not report costs for products which were once-folded, we assigned to these products the COP and CV amounts calculated for the same products sold in straight lengths, based on our findings at verification confirming that there were no appreciable cost differences associated with folding.

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory prices to home market customers. In accordance with § 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, we adjusted for differences in the circumstances of sale, in accordance with § 773(a)(6)(C)(iii) of the Act. These adjustments included differences in imputed credit expenses (offset by the interest revenue actually received by the respondent), bank charges, testing and inspection fees, and Exporters'' Association fees. We revised the interest revenue amounts received on certain home market sales based on our findings at verification. In addition, we recalculated credit expenses using the interest rates associated with Colakoglu's actual borrowings in the home market (see Comment 7). Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with § 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

B. Ekinciler

We relied on the respondent's COP and CV amounts except in the following instances:

(1) We revised the reported COP and CV amounts to account for the costs of rebar produced by subcontractors.

(2) We used the IMF's WPI to inflate the idle asset revalued depreciation expense adjustment, SG&A and financing expense (*see* Comment 2).

(3) We included translation losses in financing expense and amortized them over the remaining life of the loans (*see* Comment 3).

(4) We disallowed Ekinciler's offset to financing expenses for foreign exchange gains related to accounts receivable because they occurred after the sale date and therefore are not relevant to the Department's margin calculations.

(5) We added intra-factory freight expense to the cost of billets (*see* Comment 19).

(6) We reduced G&A expenses by non-operating revenue and increased G&A expenses by non-operating expenses (*see* Comment 17).

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory, ex-warehouse or delivered prices to home market customers. We excluded from our analysis home market sales by Ekinciler of non-subject merchandise because this merchandise was not within the class or kind of merchandise subject to investigation (*see* Comment 12 and § 731 and § 771(16) of the Act). Where appropriate, we made deductions from the starting price for foreign inland freight, inland insurance, and direct warehousing expenses. We revised certain foreign inland freight expenses based on our findings at verification. In accordance with § 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. As facts available for a portion of Ekinciler's total packing expenses, we used the highest verified packing expense for one of Ekinciler's mills (*see* Comment 15). In addition, we adjusted for differences in the circumstances of sale, in accordance with § 773(a)(6)(C)(iii) of the Act. These adjustments included differences in imputed credit expenses, bank charges, warranty expenses, testing and inspection fees, and Exporters'' Association fees. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with § 773(a)(6)(C)(ii) of the Act and 19 CFR § 353.57.

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

C. Habas

As noted in the ''Fair Value Comparisons'' section above, we determined NV for Habas on the basis of CV. We relied on the respondent's CV amounts except in the following instances:

(1) We revised the reported CV amounts to account for the cost of billets and rebar produced by subcontractors.

(2) Because Habas could not accurately report the unique physical characteristics of its home market products, we were unable to determine whether Habas made home market sales in the ordinary course of trade (*e.g.*, perform the cost test). Consequently, we based Habas's SG&A expenses and

profit on the weighted average of the profit and SG&A data computed for those respondents with home market sales of the foreign like product in the ordinary course of trade (*i.e.*, Colakoglu and Ekinciler) in accordance with § 773(e)(2)(B)(ii) of the Act.

Because we were unable to use Habas's home market sales data for purposes of making price-to-price comparisons, we compared export prices to CV. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses. Home market direct selling expenses were based on the weighted average of the selling expense data computed for Colakoglu and Ekinciler (the respondents for whom we found home market sales of the foreign like product in the ordinary course of trade after performing the cost test) in accordance with § 773(e)(2)(B)(ii) of the Act. U.S. direct selling expenses included imputed credit expenses, bank charges, testing and inspection fees, and Exporters' Association fees. We revised the total bank fee amount to account for unreported bank fees based on our findings at verification.

Regarding Habas's U.S. packing expenses, we revised the monthly reported figures based on corrections found at verification.

D. Metas

We relied on the respondent's COP and CV amounts except in the following instances:

(1) We used the IMF's WPI to recalculate the company's SG&A and financing expenses (*see* Comment 2).

(2) We adjusted material costs by using the actual mix of scrap purchased during 1995 (*see* Comment 23).

(3) We adjusted SG&A expenses to exclude expenses associated with the movement of finished goods because COP is calculated on an ex-factory basis, in accordance with § 773 of the Act.

(4) Because Metas made no home market sales in the ordinary course of trade (*i.e.*, all sales were found to be below cost), we based the profit and SG&A expenses used in CV on the weighted average of the profit and SG&A data computed for Colakoglu and Ekinciler, in accordance with § 773(e)(2)(B)(ii) of the Act.

Because all of Metas's home market sales were sold below their COP, we compared export prices to CV. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses. Home market direct selling expenses were based on the weighted average of the selling expense data computed for Colakoglu and Ekinciler (those respondents with home market sales of the foreign like product in the ordinary course of trade after performing the cost test), in accordance with § 773(e)(2)(B)(ii) of the Act. U.S. direct selling expenses included imputed credit expenses (offset by the interest revenue actually received by the respondent), bank charges, testing and inspection fees, and Exporters' Association fees.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones News/Retrieval Service. *See* 19 CFR § 353.60. *See e.g., Pasta.*

Critical Circumstances

In the petition, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise.

According to § 733(e)(1) of the Act, if critical circumstances were alleged under § 733(e) of the Act, the Department will determine whether:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knows or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

In this investigation, the first criterion is satisfied because the Republic of Singapore began imposing antidumping measures against rebar from Turkey in 1995. Therefore, we determine that there is a history of dumping of rebar by Turkish producers/exporters. Because there is a history of dumping, it is not necessary to address whether the importer had knowledge that dumping was occurring and material injury was likely.

Because we have found that the first statutory criterion is met, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. Pursuant to 19 CFR 353.16(f) and 353.16(g), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) Volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been ''massive.''

To determine whether or not imports of subject merchandise have been massive over a relatively short period for all respondents, except IDC, we compared each respondent's export volume for the seven months subsequent to and including the filing of the petition to that during the comparable period prior to the filing of the petition. Based on our analysis, we find that imports of the subject merchandise from Ekinciler, Habas, and Metas increased by more than 15 percent over a relatively short period, whereas the imports of subject merchandise from Colakoglu did not increase by more than 15 percent. Moreover, regarding IDC, as facts available, we are making the adverse assumption that imports have been massive over a relatively short period of time in accordance with § 735(a)(3)(B) of the Act.

Therefore, because there is a history of dumping of such or similar merchandise, and because we find that imports of rebar from all respondents except Colakoglu have been massive over a relatively short period of time, we determine that critical circumstances exist with respect to exports of rebar from Turkey by Ekinciler, Habas, IDC, and Metas. Regarding Colakoglu, because we find that imports of rebar from this company have not been massive over a relatively short period of time, we determine that critical circumstances do not exist with respect to exports of rebar from Turkey by Colakoglu. For further discussion, *see* Comment 10.

Regarding all other exporters, because we find that critical circumstances exist for three of the four investigated companies, we also determine that critical circumstances exist for companies covered by the ''All Others'' rate.

Verification

As provided in § 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

A. General

Comment 1: *Use of Total Facts Available for the Final Determination*

Petitioners assert that the Department should base its final determination with regard to Ekinciler on total facts available due to the numerous errors discovered by the Department at verification. Petitioners contend that these errors are so numerous and substantial that they call into question the propriety of using Ekinciler's response as the basis for calculating a dumping margin. Petitioners cite the following examples: (1) Ekinciler included non-subject merchandise in its home market sales database; (2) Ekinciler's packing expenses contained errors; (3) Ekinciler did not report the cost of old stocks (*i.e.*, fuel oil) and certain service production costs; and (4) Ekinciler was unable to provide the Department with heat sheets for grade 60 billets as requested.

In support of their position, petitioners cite to *Circular Welded Non-Alloy Steel Pipe from South Africa: Notice of Final Determination of Sales at Less Than Fair Value,* 61 FR 24274 (May 14, 1996) (*Steel Pipe*), where the Department used facts available because ''the number of errors discovered draw into question the completeness and accurateness of respondent's remaining sales (*i.e.*, sales not specifically reviewed at verification).'' Petitioners state that the antidumping law and the Department's practice require that the Department strive to calculate accurate margins, but that an accurate and fair comparison is not possible in view of the errors in Ekinciler's responses. Therefore, according to petitioners, the final determination for Ekinciler should be based on total facts available. Moreover, petitioners urge the Department to consider applying total facts available to Colakoglu and/or Habas on the same basis, even though their errors were not as egregious or numerous as those of Ekinciler.

Ekinciler argues that its reported sales and cost data were substantially verified by the Department and, as a result, the use of total facts available for the final determination is not supported by evidence on the record. Respondent cites to *Certain Cut-To-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review,* 61 FR 13834 (March 28, 1996), where the Department rejected petitioner's request to base the final results of the review on total best information available because respondent had been cooperative throughout the proceeding and the errors found at verification were not so large as to render the respondent's reported information unusable. Ekinciler maintains that, pursuant to § 776(a)(2) of the Act, when errors or gaps appear in otherwise timely and verified information and the respondent has been cooperative, the Department will simply revise the information or fill the gaps using non-adverse facts available. Accordingly, Ekinciler asserts that the Department should, consistent with this practice, fill the gaps in its reported data found at verification with non-adverse facts available.

Colakoglu and Habas argue that the information they have submitted on the record was also substantially verified, and, thus, the use of total facts available is not supported by evidence on the record.

DOC Position

We agree with respondents. Although our verifications uncovered certain errors in the responses of these companies, those errors are not so egregious as to resort to total facts available for purposes of the final determination. The errors found at Ekinciler consisted primarily of minor variations in the reported movement expenses due to clerical errors and inadvertent omissions—errors that the Department routinely corrects in making its final determination. Regarding the inclusion of non-subject merchandise, the Department normally excludes sales from its analysis which were found at verification to have been incorrectly included. *See Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 61 FR 69067, 69068 (Dec. 31, 1996), *Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia,* 61 FR 54767 (Oct. 22, 1996), and *Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil,* 60 FR 31960, 31965 (June 19, 1995).

Contrary to petitioners' assertion, the errors found at Ekinciler were not of the same magnitude as the errors described in *Steel Pipe.* The errors encountered at verification in *Steel Pipe* undermined the fundamental components of the respondent's submitted data and included most notably quantity and value reconciliation errors, unreported sales, and incorrect prices for a majority of sales. Such errors led the Department to determine that respondent's questionnaire responses were unverifiable. In the instant case, the discrepancies found in Ekinciler's responses are not so material and pervasive as to warrant use of total facts available. Consequently, in accordance with our practice, we have used facts available only for certain aspects of Ekinciler's response, as discussed in other comments below.

Comment 2: Selection of Inflation Index

Respondents argue that monthly costs should be inflated to year-end values using the WPI published by the IMF rather than the primary metals index (PMI) published by the Turkish Institute of Statistics. Respondents note that the WPI was used to determine that Turkey was experiencing hyperinflation and, thus, this index should be used to account for distortions caused by hyperinflation. Additionally, respondents argue that they paid for major material inputs using U.S. dollars. For this reason, respondents argue that the Department should use the WPI—which is a general indicator of the price levels of the whole economy—because it provides a reliable, macroeconomic indicator of the relative values of the Turkish lira and the U.S. dollar. Respondents assert that the PMI does not reflect macroeconomic considerations.

Petitioners counter that PMI should be used to inflate monthly costs to year-end values because this index is industry-specific and, unlike the WPI, it is not subject to influences which are irrelevant to the merchandise under investigation. Petitioners argue that the test of whether an economy is experiencing hyperinflation is a threshold test and the use of a particular index to determine whether the threshold has been met does not imply that the same index should be used to measure the impact of inflation. Petitioners also claim that it is irrelevant whether the index used is a reliable indicator of the relative values of the Turkish lira and the U.S. dollar because the index is being used for a different purpose—to inflate Turkish lira-denominated monthly expenses and cost of sales to year-end amounts.

DOC Position

We agree with petitioners that it is irrelevant whether the index used is a

macroeconomic indicator of the relative value of the Turkish lira and the U.S. dollar since inflation adjustments concern only the Turkish lira. However, we have reconsidered our use of the PMI in the preliminary determination and, for the reasons set forth below, have used instead the WPI published by the IMF to account for inflation in the final determination.

There are no financial reporting requirements prescribed by Turkish authorities that require the financial statements of Turkish companies to be restated to account for the effects of inflation. Consequently, in the absence of this requirement, none of the respondents restated their financial statements to correct for the effects of inflation. Accordingly, in this instance, we relied on International Accounting Standard (IAS) 29 entitled ''Financial Reporting in Hyper-inflationary Economies'' for guidance on an appropriate methodology. (*See* Memorandum to the File from Paul McEnrue, dated February 12, 1997.) According to IAS 29, financial statements prepared in the currency of a highly inflationary economy must be restated to account for the effects of inflation. The statement requires the use of a general price index that reflects changes in general purchasing power to restate financial statements. The IAS statement also notes that the same index should be used for all enterprises that report in the currency of the same economy. Because the WPI measures changes in the general price index, while the PMI does not, we find that it is more appropriate to use the WPI to account for inflation for purposes of the final determination.

Comment 3: Translation Losses [2]

Respondents contend that translation losses from their foreign currency borrowings (which were principally U.S. dollar-denominated) should be excluded from the submitted costs. Respondents reason that, since the translation losses are not a result of cash transactions, the losses are fictional. Respondents explain that the translation losses result from converting dollar-denominated loans into their Turkish lira equivalents as of the balance sheet date. Respondents argue that the translation losses are equivalent to monetary corrections on domestic loans and the Department's practice is to exclude monetary corrections from reported costs. Respondents note that, where the indexation (*i.e.*, adjustment for inflation) of domestic loan balances is required by the generally accepted accounting principles (GAAP) of a hyperinflationary economy, the Department's practice has been to exclude the monetary corrections on such loan balances and to treat the indexation of those loan balances as an adjustment which is not relevant to the determination of cost (*see Final Determination of Sales at Less Than Fair Value: Tubeless Disc Wheels From Brazil,* 52 FR 8947, 8949 (March 20, 1987) and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil,* 59 FR 8598, 8598 (Feb. 23, 1994)). Respondents maintain that their adjustment of foreign currency loan balances for translation losses is equivalent to the indexation of domestic loans and, thus, the Department should not include respondents'' translation losses in COP and CV. Additionally, because costs included in CV are eventually converted into dollars, respondents argue that the Department should base loan costs on the U.S. dollar-denominated loan balances and avoid the conversion from dollars to Turkish lira and back to dollars which creates a loss that does not exist in dollar terms.

Petitioners argue that translation losses are ''real costs'' that should be included in COP and CV. To support their position, petitioners cite the decision of the Court of International Trade (CIT) in *Micron Tech.* v. *United States,* 993 F. Supp. 21, 29–30 (CIT 1995). In that case, the CIT held that ''increased liability for borrowed funds caused by fluctuations in the exchange rate . . . are akin to an increased cost of borrowing funds that should be included in any reasonable measure of the cost climate faced by the company during the period of investigation. . . .'' Moreover, petitioners maintain that it is the Department's practice to include foreign exchange translation losses in the cost of manufacturing (*see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Products, Certain Cold-Rolled Carbon Steel Products, Certain Corrosion-Resistant Carbon Steel Products and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37187 (July 9, 1993)).

Petitioners contend that respondents'' argument for excluding translation costs from COP and CV fails for the following reasons. First, CV is the cost of producing merchandise in the exporting country and not the cost of producing merchandise in the United States or in U.S. dollars. Therefore, the fact that a translation loss does not exist in dollars is irrelevant. Second, the Department's practice of excluding from costs monetary adjustments from the indexation of domestic loan balances does not apply in this case because respondents do not index their foreign currency or domestic loans and Turkish GAAP does not call for such indexation. Third, respondents did not cite any precedent which establishes the Department's position regarding the treatment of monetary corrections for foreign currency loans. Thus, petitioners urge the Department to include respondents'' translation losses in COP and CV.

DOC Position

We agree with petitioners. The cases cited by respondents are not specifically related to the Department's treatment of monetary corrections for foreign currency loans. The Department does not agree with respondents' supposition that their translation losses are fictional. The translation losses are recorded in respondents'' financial statements in the ordinary course of business. In the past, the Department has found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign currency-denominated loan balances. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 24 FR 7019, 7039, (Feb. 6, 1995). We have therefore included the translation losses in our calculation of COP and CV and have amortized these expenses over the remaining life of the companies'' loans.

Comment 4: Waste and Discarded Material

Petitioners note that the accounting method used by each respondent to record the value of scrap (either generated from or recycled back into rebar production) can result in a significant understatement of costs. Petitioners reason, therefore, that the Department should closely scrutinize the quantity, value and accounting treatment of scrap reported by each respondent.

Respondents maintain that each company's treatment of scrap is reasonable and does not result in a significant understatement of costs.

DOC Position

We reviewed and verified the respondents' accounting treatment of

[2] Foreign currency translation is the process of expressing amounts denominated in one currency in terms of a second currency, by using the exchange rate between the currencies. Assets and liabilities are translated at the current exchange rate on the balance sheet date. The Department typically includes foreign exchange translation gains and losses in a respondent's financial expenses if such gains and losses are related to the cost of acquiring debt for purposes of financing the production of the subject merchandise.

scrap. We found respondents' treatment accurately reflects the value of scrap. *See* Colakoglu Cost Verification Report at 6 and 7; Ekinciler Cost Verification Report at 10 and 18; Habas Cost Verification Report at 9 and 17; and Metas Cost Verification Report at 10 and 18.

Comment 5: Treatment of Defective Bar and ''Out-of-form'' Billets

Petitioners assert that Colakoglu and Habas improperly treated defective bar and ''out-of-form'' billets, respectively, as co-products. Petitioners argue that both respondents should have treated these products as by-products. Petitioners state that by-products are: (1) products that have low sales value compared to the sales value of the main product; and (2) produced unintentionally as part of the manufacturing process from the intended product. Petitioners assert that Colakoglu's defective bar and Habas's out-of-form billet satisfy all the by-product criteria and, therefore, should be treated as such.

Colakoglu maintains that its co-product accounting treatment of defective bar is proper, stating that a co-product accounting methodology is consistent with the manner in which defective bar is treated in its books and records in the normal course of business. Colakoglu argues that during verification the Department did not find its co-product methodology distortive.

Habas argues that it properly treated ''out-of-form'' billet as a co-product because billets are a finished good and are treated as such in Habas's books. Furthermore, Habas contends that it accounts for such billets in the same manner as it accounts for plain billets in the ordinary course of business. Habas also states that the only difference between billet and rebar production processes is the additional rolling time required for rebar.

DOC Position

We agree with respondents. We believe that the methods used by Colakoglu and Habas to account for defective bar and ''out of form'' billet, respectively, are reasonable because we found that they do not distort the cost of producing rebar. Consequently, we have relied on them for purposes of the final determination.

According to § 773(f)(1)(A) of the Act, ''costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, when appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.'' *See also* H.R. Doc. No. 316 (SAA) at 834 and 835. The CIT has upheld the Department's use of expenses recorded in the company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. *See e.g., Laclede Steel Co.* v. *United States*, Slip Op. 94–160 at 22 (CIT 1994).

Accordingly, our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise and are in accordance with the GAAP of its home country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29559 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Welded Pipe from the Republic of Korea,* 57 FR 53693, 53705 (Nov. 12, 1992); and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22550, 22556 (May 8, 1995). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21952 (May 26, 1992).

In the instant proceeding, therefore, the Department examined whether respondents' accounting methodology for defective bar and ''out of form'' billet reasonably reflects the cost of producing the subject merchandise. We found that the quantity of defective bar and ''out of form'' billet produced by these companies, in relation to total production of all bar products, is so small as to not significantly affect the per-unit cost for rebar. *See* Colakoglu Cost Verification Report at 12 and Habas Cost Verification Report at 11. As such, we have determined that respondents' methods of accounting for defective bar and ''out of form'' billet do not distort the cost of producing rebar. Moreover, these methods are used in the normal course of business. Accordingly, we have accepted these methods for purposes of the final determination.

Comment 6: Revised Cost Databases Submitted by Colakoglu and Habas

Petitioners argue that several fields in the cost databases submitted after verification were revised without explanation from those used for the preliminary determination. Therefore, petitioners argue that the Department should use facts available instead of the unexplained values contained in the altered fields. If the Department has the information at its disposal, petitioners ask that the Department explain why certain fields were omitted from the revised cost databases.

In addition, petitioners state that Habas reported costs for certain products for months during which there was no production of those products. Petitioners maintain that the Department should ensure that Habas did not fail to account for all costs actually incurred and that the method Habas used to calculate monthly costs appropriately allocated all costs. Petitioners argue that the Department should use total facts available if Habas's submissions do not account for all costs actually incurred, or if all costs are accounted for but inappropriately allocated.

Colakoglu maintains that certain fields in its cost database were altered due to changes that were requested by the Department. Furthermore, Colakoglu states that certain fields were omitted because the Department did not use those fields for the preliminary determination, and, in fact, never requested that such data be reported.

DOC Position

We disagree with petitioners. We analyzed respondents' revised databases and found that all revisions were the direct result of changes requested by the Department. Moreover, regarding the omitted fields, we agree with Colakoglu that these fields were unnecessary and were not used in our analysis. Therefore, we have accepted respondents' revised databases for purposes of the final determination.

Company-Specific Issues

B. Colakoglu

Comment 7: Interest Rate Used to Calculate Home Market Credit Expenses

Colakoglu argues that the Department should not use loans issued by the Turkish Eximbank in calculating its home market imputed credit expenses. Colakoglu asserts that its Eximbank loans were related to export-oriented activities and, as such, were not used to

finance home market sales. As precedent for its position, Colakoglu cites *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 43327 (Aug. 16, 1993) *(Porcelain-on-Steel Cooking Ware),* where the Department excluded short-term export loans from the information used to calculate the home market interest rate.

Petitioners disagree, stating that the Department should use Colakoglu's Eximbank loans in calculating credit because Colakoglu had no other source of borrowings denominated in Turkish lira during the POI. Petitioners maintain that Colakoglu's actual borrowings are more indicative of the company's short-term borrowing experience than are the rates published by the IMF. Moreover, petitioners claim that the facts in this case are distinguishable from those in *Porcelain-on-Steel Cooking Ware* because the respondent in *Porcelain-on-Steel Cooking Ware* had other short-term loans denominated in the home market currency.

DOC Position

We agree with petitioners. In general, the Department's practice with regard to the interest rate used to calculate home market imputed credit expenses is to base the rate on a company's actual borrowings in the home market currency. The Department makes exceptions to this practice either when there are no loans in the home market currency or when a company is able to prove that its loans in that currency do not form an appropriate basis for the home market interest rate (*e.g.*, when they are tied to specific export transactions).

In *Porcelain-on-Steel Cooking Ware*, it was demonstrated to the Department's satisfaction that the loans at issue were tied directly to exports of subject merchandise. In this case, however, not only is there no evidence on the record showing that these loans are tied to U.S. sales of rebar, but there is also no evidence that they are tied to exports at all. Moreover, these loans are based on Turkish lira-denominated borrowings and bear interest rates into which inflation has been factored. Consequently, we find that the interest rates paid on these loans are more indicative of Colakoglu's actual borrowing experience than are the interest rates published by the IMF. Accordingly, we have used them in our calculation of home market credit for purposes of the final determination.

Comment 8: SG&A Expenses Incurred by Affiliated Parties at the Port

Colakoglu argues that the Department should not include in its U.S. movement expenses those SG&A expenses incurred by Denak, an affiliated party, in connection with export-related activities at the port. According to Colakoglu, the administrative services performed by Denak consist of securing vessels and communicating with vessel owners, not running the port or moving goods. As such, Colakoglu asserts that these circumstances are analogous to the circumstances in which a respondent itself secures the services of an unaffiliated ocean freight company. Colakoglu notes that, in such an instance, the Department does not add a respondent's overhead expenses to the amount reported for ocean freight.

Colakoglu also contends that in the event that the Department decides that it must make an adjustment for Denak's SG&A expenses, the Department should exclude those expenses which were unrelated to services provided on behalf of Colakoglu.

Petitioners assert that the Department should make an adjustment for Denak's SG&A expenses in order to ensure that all U.S. movement expenses are captured in the margin calculation.

DOC Position

We disagree with petitioners and have made no adjustment for Denak's SG&A expenses for the reasons explained below.

Regarding services provided by affiliated parties, the Department's practice is to value the services at an arm's-length price. In order to determine whether the price between the parties is at arm's length, the Department generally looks at prices charged by the affiliate to unaffiliated parties or at prices paid by the respondent to an unaffiliated party. *See, e.g., Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56363 (Nov. 4, 1991). When there is no transaction with an unaffiliated party, the Department must find another way to value the services in question.

In this case, we examined Denak's role in the export process at verification. We noted that Denak performed several services for Colakoglu related to the shipment of the subject merchandise to the United States. However, we were unable to determine the arm's-length value of these services because we found that Denak did not charge Colakoglu for such services, nor did Colakoglu secure the same services from an outside party. As an alternative, we examined Denak's total SG&A expenses at verification. However, we are unable to use these expenses in our margin calculations because they relate to Denak's operations as a whole, and not just to the shipment of rebar to the United States.

Under these circumstances, the Department would normally base the per-unit amount of the expense on facts available. Given the particular facts of this case, however, we find that this is not appropriate for Colakoglu. Specifically, we find that there is no net cost associated with Denak's activities because: (1) Denak received revenue from unaffiliated parties which was directly related to Colakoglu's export of subject merchandise to the United States; and (2) Denak's revenues exceeded its aggregate costs during the POI. As such, we determine that no adjustment for Denak's SG&A expenses (or the directly-related revenues) is warranted in this case.

We note that two of the other respondents, Ekinciler and Habas, had similar arrangements with affiliated parties during the POI and similar problems in determining the amount of per-ton SG&A expenses. Consistent with our treatment of Colakoglu's situation, we have made no adjustments for either the expenses or revenues associated with these transactions.

Comment 9: Use of Data Contained in Revised Sales Database

At verification, the Department found that in certain instances Colakoglu had reported average home market price and interest revenue data. Colakoglu argues that the Department should accept its revised database correcting these data for purposes of the final determination. Colakoglu maintains that the averaging affected only a limited portion of the home market database. Moreover, Colakoglu notes that the corrected information was verified by the Department.

Petitioners contend that the Department should not use the data in question. According to petitioners, this information is untimely because it was submitted after the deadline for submission of factual information (*i.e.*, seven days prior to the start of verification). Petitioners cite *Elemental Sulfur from Canada: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 969 (Jan. 7, 1997) (*Elemental Sulfur*), which outlines the conditions under which the Department will accept new information

at verification.[3] Petitioners claim that the conditions set forth in *Elemental Sulfur* do not apply here.

DOC Position

We disagree with petitioners. The information in question was not new information within the meaning of 19 CFR § 353.31 because it consisted of minor corrections to data which were already on the record and affected only a limited portion of Colakoglu's home market database. Accordingly, consistent with our practice outlined in *Elemental Sulfur,* we used Colakoglu's revised home market database for purposes of the final determination.

Comment 10: Critical Circumstances

Colakoglu maintains that the Department should determine that critical circumstances do not exist with respect to its shipments based on the fact that the increase in its imports has not been massive prior to the preliminary determination. According to Colakoglu, it is the Department's practice to use in its analysis the longest period for which information is available from the month of the filing of the petition until the effective date of the preliminary determination. In this case, the appropriate period would be seven months.

Petitioners contend, however, that the Department should define the period used in its analysis as the five-month period between the filing of the petition and the date of the preliminary determination as originally scheduled (*i.e.*, August 1996). Petitioners argue that, had it not been for the Department's decision to conduct a below-cost investigation, the Department would have issued the preliminary determination in August and Colakoglu would have been effectively precluded from making its argument on critical circumstances. Moreover, petitioners assert that a finding in Colakoglu's favor would have a chilling effect on petitioners' use of either the below-cost provisions or the critical circumstances provisions of the antidumping law, by forcing petitioners to choose between alleging the existence of sales below cost or critical circumstances.

DOC Position

We agree with Colakoglu. In determining whether imports have been massive within the meaning of § 735(a)(3)(B) of the Act, it is the Department's practice to base its analysis on the longest period for which information is available, normally beginning with the month of filing of the petition[4] and ending with the date of the preliminary determination. *See Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China* (issued on Feb. 24, 1997), where the Department used a seven-month period; *Notice of Preliminary Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 60 FR 56567, 56574 (Nov. 9, 1995), where the Department used periods ranging from three to six months, based on ''the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the effective date of the preliminary determination,'' affirmed in *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026, 19031 (April 30, 1996)); and *Notice of Preliminary Determination of Critical Circumstances: Disposable Pocket Lighters from the People's Republic of China,* 60 FR 436, 437 (Jan. 4, 1995), where the Department used a period of seven months, affirmed in *Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China,* 60 FR 22359, 22363 (May 5, 1995).

Consequently, we have based our analysis on the seven-month period between the filing of the petition and the date of the preliminary determination. Using these data, we find that imports by Colakoglu have not been massive over a relatively short period of time. Accordingly, we find that critical circumstances do not exist for Colakoglu.

Comment 11: Affiliated Party Freight Services

Colakoglu argues that the transfer prices that it pays to its affiliate Denak for transporting imported scrap are not equivalent to market prices and, therefore, should not be used in the Department's final determination. Respondent notes that, in the past, the Department has included transfer prices only when it was demonstrated that they were equivalent to market prices. *See Final Determination at Less Than Fair Value: High Information Content Flat Panel Displays and Display Glass from Japan,* 56 FR 32376, 32376 (July 16, 1991). Respondent reasons that, in order for the Department to conclude that the transfer price between Colakoglu and its affiliate is at arm's length, the Department must conclude that prices charged by the affiliate are comparable to those charged by an unaffiliated freight supplier. Respondent argues that the discrepancy between Denak's price and the unaffiliated price demonstrates that the amount charged by Denak is not an arm's-length price and should be disregarded. Respondent notes that the statute does not specify that only transfer prices that are lower than market prices may be disregarded. Rather, respondent points out that in the past the Department has also disregarded transfer prices which are higher than arm's-length prices. *See Final Results of Antidumping Duty Administrative Review: Color Picture Tubes from Japan,* 55 FR 37915, 37922 (Sept. 14, 1990).

Petitioners argue that the Department should continue to use the price Colakoglu paid to Denak for freight services because it is an arm's-length price. Petitioners note that the Department has recently found that ''in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' *See Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2081, 2115 (Jan. 15, 1997) (*AFB's*).

DOC Position

We agree with petitioners. In determining whether a transaction occurred at an arm's-length price for a major input, as stated in *AFB's*, the Department will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing a major input.

In the normal course of business Colakoglu records the transfer price in its books to account for freight costs from its affiliate. However, Colakoglu submitted its affiliate's cost of providing freight service, the transfer price paid by Colakoglu, and prices from unaffiliated freight companies. In accordance with the practice outlined in *AFB's*, we

[3] These conditions are: (1) the need for the information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.

[4] The date on which a petition is filed will determine whether the month of filing will be included in the base or comparison period.

compared these data and found that the price paid to Denak was an arm's-length price for freight services pursuant to § 773(f) (2) or (3) of the Act. Accordingly, we have used the affiliated company's transfer price to value freight services.

C. Ekinciler

Comment 12: *Non-Subject Merchandise*

Ekinciler argues that the inclusion of de minimis quantities of non-subject merchandise in its home market database is not material to the calculation of dumping and that the Department should not adjust its reported home market sales database with regard to non-subject merchandise. Ekinciler states that the number of sales of fabricated rebar inadvertently included in its home market sales database is so small as to be insignificant. Ekinciler maintains that a comparison of the relative prices of the non-subject rebar to the subject rebar demonstrates that the inclusion of the non-subject merchandise is of no consequence and may work to its disadvantage. Thus, Ekinciler asserts that the Department should continue to use Ekinciler's submitted home market database without making adjustments for fabricated rebar for purposes of the final determination.

Petitioners contend that, if the Department does not base Ekinciler's margin on total facts available (*see* Comment 1), it should use the most adverse facts available for this aspect of Ekinciler's margin.

DOC Position

We disagree with respondent, in part. We agree with respondent that the Department should continue to use its home market sales listing because the quantity of non-subject merchandise included is small. However, according to § 773(a)(1)(B)(i) of the Act, the price on which normal value is based is ''the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country * * *'' Therefore, we are required by the statute to exclude non-subject merchandise from our calculation of normal value.

Petitioners point to the inclusion of non-subject merchandise as evidence that Ekinciler's entire response is unreliable and propose the use of the most adverse facts available for this aspect of Ekinciler's response. We find, however, that adverse facts available is not warranted in this instance because we were able to verify Ekinciler's home market sales of subject merchandise. Accordingly, we have excluded all sales of non-subject merchandise discovered at verification.

Comment 13: Dunnage Revenue

Petitioners argue that the Department should omit dunnage revenue from the calculation of U.S. price for Ekinciler because dunnage revenue could not be verified. Specifically, petitioners cite to the verification report which stated that Ekinciler was ''unable to provide bills of lading for third country sales that would have confirmed which shipment was more appropriately associated with the dunnage sales.''

Ekinciler contends that, although it was not possible to directly tie the reported dunnage revenue to a specific U.S. sale, its methodology is reasonable, and the Department should make an adjustment for the reported revenue. Ekinciler maintains that, as stated in the verification report, no more than one vessel may dock at the port for loading at any one time. Therefore, since Ekinciler matched dunnage sales to shipments that left the port on approximately the same date as the date of the dunnage sale, it claims that it is reasonable to assume that the reported dunnage revenues were earned in connection with the identified U.S. shipments.

DOC Position

We agree with petitioners. At verification, we noted that Ekinciler did not receive revenue from the sale of dunnage materials on every export shipment. Consequently, we were unable to verify that the reported dunnage revenue actually corresponded to shipments of U.S.-bound rebar and not to shipments to other export markets. Therefore we did not include dunnage revenue in our final margin calculation for Ekinciler.

Comment 14: Home Market Credit Expense

Ekinciler asserts that the Department should make no adjustment for imputed home market credit expense for the final determination because this adjustment is de minimis. Ekinciler claims that the imputed credit expense resulting from the use of its verified average number days outstanding is insignificant, and that the Department should disregard this insignificant adjustment to NV in accordance with § 777A(a)(2) of the Act and 19 CFR 353.59(a). Alternatively, Ekinciler contends that the Department should correct its calculation of credit to reflect that the interest rate reported is an annual rate.

DOC Position

We agree with respondent, in part. According to § 773A(a)(2) of the Act, the Secretary may disregard adjustments that are insignificant. However, there is no requirement that adjustments which may be insignificant must be disregarded. We have made the adjustment to NV for imputed credit expenses because this adjustment can be easily made and the information on which it is based has been verified and is reliable. However, we agree with respondent that this expense was calculated incorrectly for the preliminary determination. Accordingly, we have corrected our calculation for the final determination to reflect that the interest rate was reported on an annual basis.

Comment 15: Packing Expenses

Ekinciler argues that the Department should accept its packing expenses as reported. Ekinciler maintains that, although the Department's verification report indicates that there was a variation in the reported packing expenses for one of its mills as well as a difference in home market and U.S. packing, it was unaware that there was any significant discrepancy between the reported packing costs and those found at verification. Ekinciler states that, if the Department should find that the packing expenses with respect to the mill in question need to be corrected, the Department may use any of the reported monthly packing expenses from its other mills. According to Ekinciler, these sources provide accurate, verified data reasonable for use as facts available, particularly since Ekinciler can be assumed to have sourced all of its packing materials for all of its mills from the same sources at the same prices.

Petitioners argue that, if the Department does not base Ekinciler's margin on total facts available (*see* Comment 1), it should use the most adverse facts available for this aspect of Ekinciler's margin calculation.

DOC Position

We disagree with Ekinciler that the Department should accept its submitted packing expenses. At verification, Ekinciler was unable to demonstrate that the packing expenses associated with one of its mills were reported correctly. Consequently, we have based the packing expenses for the mill in question on facts available. As facts available, we used the highest verified monthly packing expense reported by Ekinciler for any of its other mills.

Comment 16: Depreciation

Petitioners claim that Ekinciler failed to allocate the year-end inflation adjustment for depreciation expense to each month of the year. Thus, petitioners maintain that Ekinciler's monthly depreciation costs are understated.

According to Ekinciler, its cost submissions clearly show that the year-end inflation adjustment to depreciation expense was included in the monthly costs used to derive COP and CV. Also, Ekinciler asserts that, if the Department inflates its monthly production costs as it did in the preliminary determination, it will overstate its depreciation expense because this expense was already adjusted to account for inflation. Ekinciler notes that the Department verified its reported depreciation expense included a monthly adjustment. This adjustment was calculated at year-end using the revaluation index published by the Turkish Ministry of Finance and applied to each month's costs. Therefore, Ekinciler contends that in the final determination the Department should either: (1) Not inflate reported monthly depreciation expenses; or (2) deflate the reported monthly depreciation expenses to remove the effects of the revaluation before depreciation expenses are inflated.

DOC Position

We agree with Ekinciler. Ekinciler expressed the year-end inflation adjustment to depreciation expense as a percentage of cost of sales and applied this percentage to reported monthly manufacturing costs to derive the monthly depreciation expense reported for COP and CV. Thus, contrary to petitioners'' claim, the adjustment to inflate depreciation expense was applied to each month of the POI.

Additionally, the Department found at verification that the reported depreciation expense was calculated using asset costs that had been revalued with the revaluation index published by the Turkish Ministry of Finance. Moreover, Ekinciler provided a translation of the Ministry of Finance's regulations concerning asset revaluation which indicated that the revaluation index is based on an inflation index. Thus, revaluation using this index means that the depreciation expense was already adjusted for inflation. Accordingly, for the final determination we have subtracted depreciation expense from total manufacturing costs before inflating those costs to year-end values. We added inflated manufacturing costs to the reported depreciation expense to derive the total cost of manufacturing.

Comment 17: Other Revenue and Expenses

Petitioners maintain that Ekinciler should include non-operating and other expenses in general and administrative (G&A) expenses because these expenses are related to the production of subject merchandise. However, petitioners argue that non-operating and other revenue should not be used to offset G&A expenses because this revenue is either from activities unrelated to the sale or manufacture of rebar or from accounting adjustments.

Ekinciler maintains that both non-operating and other expenses and revenue should be included as reported because these are components of G&A expenses. Unless G&A expenses are reported on a divisional or product-line basis, Ekinciler contends that it is irrelevant that an element of G&A does not relate to the subject merchandise.

DOC Position

We agree with Ekinciler that both non-operating and other revenue and expenses should be included in G&A. At verification, we identified each item included in non-operating and other revenue and expenses. After examining these items we determined that, except for one revenue item, Ekinciler's non-operating and other revenue and expenses relate to the subject merchandise. We reached this conclusion because these items are generated from resources associated with the production of subject merchandise. The Department's practice is to adjust G&A expenses for miscellaneous revenue and expenses related to the production of subject merchandise (*see Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina*, 60 FR 33539, 33550, (June 28, 1995)). Therefore, we have increased G&A by non-operating and other expenses and reduced G&A expenses by non-operating and other revenue except for the one revenue item unrelated to the production of subject merchandise.

Comment 18: G&A Rate

Petitioners note that Ekinciler included certain non-manufacturing costs (*i.e.*, costs associated with operating Ekinciler's port and cafeteria) in the denominator of its G&A ratio, but did not report these costs elsewhere in its response. Petitioners argue that, because these non-manufacturing costs were not included in COP and CV, the Department should base both Ekinciler's G&A rate and COP on adverse facts available. Petitioners claim that Ekinciler's failure to report the costs in question demonstrates that the company's response contains other inaccuracies. At a minimum, however, petitioners argue that, if the Department does not apply adverse facts available, it should treat the non-manufacturing costs consistently (*i.e.*, either exclude or include such costs from both the G&A rate and the reported costs).

Ekinciler maintains that the Department should accept its G&A rate as reported (*i.e.*, by including the non-manufacturing costs in question as part of the denominator of the calculation of the G&A rate). Ekinciler notes that the Department defined G&A expenses in its cost questionnaire as ''those period expenses which relate to the activities of the company as a whole rather than to the production process alone.''

DOC Position

We agree with Ekinciler. Because the G&A expenses used to derive the G&A rate relate to the activities of the company as a whole, including non-manufacturing activities, we have determined that the methodology Ekinciler used to compute the G&A rate is appropriate. Furthermore, the non-manufacturing costs are related to a separate line of business and, thus, they are unrelated to the manufacture of the subject merchandise. Therefore, these costs were properly excluded from the COP and CV.

Comment 19: Billet Transportation Costs

At verification, the Department found that Ekinciler failed to include the cost of transporting billets within the factory in its reported billet cost. Ekinciler urges the Department to accept the reported billet costs because the omission found at verification is insignificant.

Petitioners claim Ekinciler's failure to include intra-factory transportation costs in reported billet costs indicates Ekinciler's responses are unreliable and therefore, the Department should base Ekinciler's billet cost on adverse facts available.

DOC Position

We disagree with petitioners. For the reasons stated in Comment 1, we do not find that Ekinciler's omission of intra-factory transportation costs satisfies the statutory requirements for using facts available or making adverse inferences in reaching a determination. Therefore, consistent with the Department's practice of correcting minor errors where the use of adverse facts available is unwarranted, we adjusted the

reported billet cost to include intra-factory transportation costs (*see Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan,* 62 FR 2648, 2650 (Jan. 17, 1997)).

D. Habas

Comment 20: Packing Expenses

Habas acknowledges that the Department was unable to verify the monthly production quantities of exported billet, which together with monthly rebar production quantities serve as the denominator for monthly per-unit strap expense. However, Habas maintains that the Department was able to successfully verify all other components of its packing calculation. Habas, therefore, argues that the Department should continue to use Habas's reported packing costs in the margin calculation.

Petitioners argue that, because the Department found Habas's packing expense to be erroneous at verification, the Department should either base Habas's packing expense on adverse facts available or recalculate Habas's packing expense taking into account the information discovered at verification. Petitioners maintain that using adverse facts available with respect to calculating Habas's packing expense is appropriate because: 1) the respondent has an obligation to provide accurate data; 2) the Department has a practice of not accepting new information submitted at verification; and 3) the Department's resorting to the use of facts available constitutes a significant incentive for the submission of accurate data.

DOC Position

To calculate the per unit strap expense in its overall packing calculation, Habas used billets produced for export along with total rebar production as part of the calculation's denominator. At verification, Habas was unable to provide supporting documentation for billets produced for export. We agree with respondent that, other than this one element, the Department was able to successfully verify all other packing material and labor expenses. Therefore, we disagree with petitioners that adverse facts available is warranted in this instance. We do, however, agree with petitioners that the Department should recalculate Habas's packing expense taking into account the information discovered at verification. Therefore, rather than billets produced for export, we used the total verified 1995 exports of billets and total rebar production as the denominator for the per-unit strap calculation.

Comment 21: Home Market Credit

Habas states that, as reported to the Department, its books do not accurately reflect the date of receipt of payment for home market sales. However, Habas contends that its methodology for reporting payment dates and amounts of payment is consistent with the records kept by Habas in the ordinary course of business. Therefore, Habas argues that the Department should continue to use its reported home market credit expenses in the final determination.

DOC Position

Because we did not use Habas's selling expense data for purposes of the final determination, this issue is moot.

Comment 22: G&A Expenses

Petitioners assert that, as facts available, the Department should base Habas's G&A expenses on Habas's annual corporate-wide G&A expenses for 1995, adjusted for inflation, rather than the G&A expenses for the iron and steel division. As support for this position, petitioners cite the Department's practice in the following determinations: *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, Certain Cut-to-Length Carbon Steel Plate from Canada,* 58 FR 37099, 37114 (July 9, 1993).

Habas maintains that the Department verified all of its SG&A expenses. Habas states that, although the Department frequently uses a corporate-wide G&A rate, the Department's practice is to use selling expenses which are based on the expenses of the relevant division within a company. Therefore, Habas maintains that the correct ratio to use for the sales portion of the SG&A is the indirect selling expenses of the iron and steel division divided by the iron and steel division's cost of sales.

DOC Position

Insofar as we did not use Habas's G&A expenses in the calculations for the final determination, this issue is moot.

E. Metas

Comment 23: Material Costs

Petitioners argue that Metas's submitted cost of materials is not based on the actual quantities of scrap used in the production of rebar. Petitioners note that Metas calculated its submitted cost of scrap inputs based on the company's policy regarding the preferred mixture of different scrap types. Petitioners maintain that the Department was unable to verify that Metas's policy of preferred scrap usage is indicative of the actual scrap used to produce rebar during the POI. Petitioners believe that Metas's schedule of scrap purchases during the POI is the best evidence on the record of actual scrap used and argue that the Department should adjust Metas's material costs so that the average usage of scrap reflects the ratio of scrap purchased during 1995.

DOC Position

We agree with petitioners. In order to provide the Department with product-specific material costs, Metas calculated the cost of materials using the average scrap quantities it believes are typical of the mixtures required to make rebar. During verification, we found that Metas does not specifically track the quantity of the types of scrap used in the production of rebar. As a result, Metas was unable to provide us with documentation to substantiate the ratio of scrap types used in its calculations. Therefore, we recalculated Metas's material costs using the actual mix of scrap purchased during 1995.

Continuation of Suspension of Liquidation

In accordance with § 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of rebar from all companies except Colakoglu that are entered, or withdrawn from warehouse, for consumption on or after July 12, 1996, which is 90 days prior to the date of publication of the notice of the preliminary determination in the Federal Register. Regarding Colakoglu, we are directing the Customs Service to continue to suspend liquidation of all entries of rebar from Colakoglu that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996, the date of publication of our preliminary determination in the Federal Register. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Colakoglu	9.84	No.
Ekinciler	18.68	Yes.
Habas	19.15	Yes.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
IDC	41.80	Yes.
Metas	30.16	Yes.
All Others	16.25	Yes.

ITC Notification

In accordance with § 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to § 735(d) of the Act.

Dated: February 24, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5228 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Export Trade Certificate of Review; Notice of Application to Amend Certificate

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any priviledged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 95–A0006.''

The Water and Wastewater Equipment Manufacturers Association (''WWEMA'') original Certificate was issued on June 21, 1996 (61 FR 36708, July 12, 1996). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Water and Wastewater Equipment Manufacturers Association (''WWEMA''), 101 E. Holly Avenue, Suite 14, Sterling, Virginia 22170.

Contact: Randolph J. Stayin, Partner.

Telephone: (202) 289–1313.

Application No.: 95–A0006.

Date Deemed Submitted: February 19, 1997.

Proposed Amendment: WWEMA seeks to amend its Certificate to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Ashbrook Corporation, Houston, Texas and The F.B. Leopold Company Inc., Zelienople, Pennsylvania (Parent: Thames Water Products & Services); Jeffrey Chain Corporation, Morristown, Tennessee; and Waterlink, Inc., Canton, Ohio, and its subsidiaries which include Aero-Mod, Incorporated, Manhattan, Kansas; Great Lakes Environmental, Inc., Addison, Illinois; Mass Transfer Systems, Inc., Fall River, Massachusetts; SanTech, Inc. dba Sanborn Technologies, Medway, Massachusetts; Water Equipment Technologies, Inc., West Palm Beach, Florida; and Waterlink Operational Services, Inc. dba Blue Water Services, Manhattan, Kansas.

Dated: February 26, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–5252 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 011597A]

Pacific Salmon Fisheries off the Coasts of California, Oregon, Washington, Alaska and in the Columbia River Basin

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; scoping meeting; extension of comment period.

SUMMARY: In the Federal Register of January 27, 1997, NMFS announced its intent to hold scoping meetings, prepare Environmental Assessments (EAs) and an Environmental Impact Statement (EIS) on ocean and in-river fisheries that may result in the incidental take of Pacific salmonids currently listed or proposed for listing under the Endangered Species Act. NMFS will hold an additional scoping meeting in Alaska and is also extending the comment period on the EIS and EAs.

DATES: Written comments will be accepted through March 21, 1997. The scoping meeting will be held on March 6, 1997, 1:30–3:30 p.m., Sitka, AK.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in the EIS should be sent to Joseph R. Blum, Office of Protected Resources, Endangered Species Division (PR3), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

The scoping meeting for Alaska will be held at the Swan Lake Senior Center, 402 Lake Street, Sitka, AK 99835.

FOR FURTHER INFORMATION CONTACT: Joseph R. Blum (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Background and rationale for this action were provided in the notice of intent (62 FR 3873, January 27, 1997) and are not repeated here.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Tamra Faris (907) 586–7228 at least 3 days before the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*; 42 U.S.C. *et. seq.*

Dated: February 26, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5263 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 970121009–7009–01]

RIN 0648–ZA27

Coastal Services Center Coastal Management Fellowship

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: The Coastal Services Center is issuing this notice to solicit applications for the Coastal Services Center Coastal Management Fellowship program. The Fellowship program was established to provide professional on-the-job education and training opportunities for post-graduate students in coastal resource management and policy and to provide specific technical assistance for state coastal resource management programs. For two years the Fellows will work on substantive state-level coastal resource management issues that pertain to Federal management policies and regulations. The grants will be provided to the Sea Grant Programs of the States hosting the Fellows. These Sea Grant Programs will administer the grants.

DATES: Applications for Fellowship positions will be available from all Sea Grant Program offices and the Coastal Services Center beginning on 21 February 1997. Applications will be due to State Sea Grant Directors no later than 28 March 1997. Each Sea Grant Directors may nominate up to two qualified candidates. These nominations from the Sea Grant Directors are due to the Coastal Services Center no later than 11 April 1997. Those candidates selected to be finalists will be notified by 30 April 1997. Fellowships and selected projects will begin 1 October 1997.

ADDRESSES: Send requests for the Fellowship Selection Application packages as well as completed nomination packages to CSC Coastal Management Fellowships, Attn: Mr. Michael Pentony, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina, 29405–2413.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pentony, Coastal Management Services, at (803) 974–6257.

SUPPLEMENTARY INFORMATION:

Authority

Statutory authority for these awards is provided under 16 USC 1456.c [Technical Assistance]; 15 USC Sec. 1540 [Cooperative Agreements]; and, 33 USC 1442 [Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems].

Catalog of Federal Domestic Assistance (CFDA)

The CSC Program is listed in the Catalog of Federal Domestic Assistance under Number 11.473.

Program Description

The goal of the Coastal Services Center is to build capabilities around the nation which simultaneously address pressing issues of coastal health and change by conserving coastal environments including coastal wetlands, riparian forested wetlands, maritime forests, fisheries/shell fisheries, and other living marine resources and by promoting efficient and sustainable industry, farming, commercial and residential development, urban redevelopment, and tourism.

Seven competitive post-graduate fellowships will be awarded for meritorious recent Masters, professional, and Ph.D. degree recipients to spend two years working with coastal resource management agencies on state-level needs and federal management issues. State coastal zone programs provided project proposals in a competition for placement of one of the CSC Coastal Management Fellows (see section on Application Requirements).

The project selection process was completed before the fellow selection process in order to give the Sea Grant Directors and prospective Fellows better guidance as to the nature of the projects for which they will be competing. Given that the projects are being selected independently of the fellow selection and the desire to broaden the educational experience of selected fellows, they will most likely be serving outside of their Sea Grant home state.

Funding Availability

Coastal Service Center funding for each twenty-four month fellowship is expected to be $64,000, for a total of $448,000 for the seven fellowships over the fellowship period. Publication of this announcement does not require NOAA CSC to make any specific award or to obligate any amount of the funds available. The two year grant of $64,000 with an additional $12,000 State match made for each Fellow to the receiving state's Sea Grant program includes $30,000 per year for the Fellow divided into a $20,000 stipend and $10,000 for per diem. The remaining $8,000 per year will be roughly divided as follows: $5,000 for benefits, including health insurance; $1,000 for moving expenses; $1,500 for travel associated with the fellowship experience; and, $500 for any administrative costs incurred by the administering Sea Grant program. Required travel for the Fellows includes attending either the Coastal Zone Conference or the bi-annual meeting of The Coastal Society, depending on the year. NOAA will provide funding directly to the Sea Grant Programs that will administer the grants.

Matching Requirements

Cost sharing of a portion of the fellow cost for the second year of the fellowship is required by each state in which a Fellow is placed, in the amount of $12,000. Additionally, the coastal zone program is expected to provide in-kind support (office space, phone service, computer equipment, etc.) for the entire term of the fellowship.

Type of Funding Instrument

The projects will be awarded as a Grant, distributed by the Coastal Services Center. NOAA anticipates that there be no substantial involvement of the Coastal Services Center in the performance of activities under this assistance program.

Eligibility Criteria

Any student who has completed a master's, doctoral, or professional degree program in coastal, marine, or Great Lakes related studies at any

accredited United States institution of higher education in 1996 or by 30 September 1997, is eligible to apply through the state Sea Grant Program nearest their residence or graduate institution. Knauss Marine Policy Fellows from the previous year, who have finished their degree requirements, may also apply.

All states with federally approved coastal zone management programs, and states developing such programs for approval, were eligible to submit one application for this program through the NOAA Coastal Services Center. All eligible agencies were notified for the project proposal application process by mail in December 1996, and projects were selected in February 1997. The seven selected project agencies will serve as hosts to the CSC Coastal Management Fellows.

Once the seven Fellows have been selected and matched to the state host agencies, the Sea Grant Programs in those states will be asked to prepare a grant application package in order to receive the grant from NOAA. Those grant application packages will be due to NOAA no later than 30 June 1997.

Award Period

The twenty-four month fellowship commences 1 October 1997.

Indirect Costs

Funds to support the Coastal management Fellowship program will be given directly to the state Sea Grant programs, and the maximum allowable Administrative or Indirect Costs are five hundred dollars per year.

Application Requirements

The Coastal Services Center, in cooperation with the Coastal States Organization, National Sea Grant College Program Office, and the National Ocean Service's Office of Ocean and Coastal Resource Management (OCRM), is seeking applications from qualified individuals to complete for Fellowship projects. These projects will directly involve the Fellow in such activities as natural coastal hazards planning, mitigation and recovery; habitat evaluation or restoration; and mitigation of habitat impacts caused by a major project or type of projects.

All fellowship applications must include:

A. A personal and academic resume or curriculum vitae.

B. An educational and career goal statement from the applicant with emphasis on what the prospective Fellow expects from the experience. Placement preference in terms of geographical placement or topic of focus may be stated by the applicant, and will be honored to the extend practical. Prospective fellows should keep in mind that limited descriptions of placement or topic will make final placement more difficult.

C. Two letters of recommendation, including one from the student's major professor.

D. A detailed letter of endorsement from the sponsoring state Sea Grant Director, as a result of a face to face interview, addressing such important topics as communication skills, philosophical approach toward work, and ability to work with people.

E. Copies of all undergraduate and graduate student transcripts.

F. Standard Form 424, ''Application for Federal Assistance.''

All Fellow applicants will be evaluated and chosen only on their qualifications, therefore letters of endorsements from individuals such as members of Congress, friends, and/or relatives should not be submitted.

Sea Grant Programs submitting grant applications will be required to submit the following:

A. SF–424, ''Application for Federal Assistance;''

B. SF–424A, ''Budget Information—Non-Construction Programs;''

C. SF–42B, ''Assurances—Non-Construction Programs;''

D. Budget with necessary supporting detail, Budget Narrative;

E. Audit Information; and,

F. CD–511, ''Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace requirements and Lobbying;''

Project Funding Priorities

Funds will be awarded for the support of the Fellow, as delineated in Section 7.f. of this notice. Funds for the fellowship will be given to the Sea Grant programs in the states receiving Fellows and not to the state coastal programs that submitted project proposals.

Evaluation Criteria

Fellow applications will be evaluated based on the following criteria:

(a) Support of Sea Grant Director (25%);
(b) Support of major professor (15%);
(c) Strength of academic performance (15%);
(d) Diversity of academic background (15%);
(e) Experience working in coastal management or marine affairs (10%);
(f) Written and verbal communications skills (10%); and
(g) Ability to work with people (10%).

All qualified applicants will be considered regardless of age, race, color, sex, creed, marital status, national origin, lawful political affiliation, religious preference or non-disqualifying physical handicap. Academic discipline, geographic representation, and individual state coastal program needs will be considered in balancing the class.

Selection Procedures

Applications will be received at the Sea Grant program office nearest the applicant's graduate institution. All applications will be reviewed by the Sea Grant Director, or a designee. Applications which do not conform to the requirements may not be considered for further evaluation. Each Sea Grant Director may nominate up to two applicants for further consideration. The complete application package, with a letter of endorsement by the nominating Sea Grant Director, will be submitted to the Coastal Services Center at the address listed above under the **ADDRESSES** section of this notice.

A finalist selection panel will be convened, by 28 April 1997, to review and recommend selection of the top fourteen Fellow applicants using the criteria outlined above. This selection panel will present its recommendations to the CSC Coastal Management Fellowship Program Director. The panel will consist of the Coastal States Organization Executive Director and representatives from the Coastal Services Center, a Sea Grant Director representative from the Sea Grant Directors' Association, a representative from the NOAA Office of Ocean and Coastal Resources Management, and a current Fellow. Representatives from these groups will be chosen according to availability, timing, and other exigencies. Final decision will be made by 28 April 1997, and all Fellow applicants will be notified of the selection decision.

Although the fourteen selected Fellow applicants will be considered finalists, only seven of the finalists will become Fellows and be placed with state coastal management program hosts. Each of the selected host states will send a representative, preferably the Fellow mentor, to the final placement workshop in Charleston, SC, 28–30 May 1997. The fourteen Fellow finalists will be brought by CSC to the workshops for final interviews and placement. The placement workshops will serve as the final selection and placement point and will consist of: 1. Orientation to the program; 2. Host office project proposal presentations; 3. Finalist presentations;

4. Finalist-Host interviews; and 5. Fellow Matching.

By 7 May 1997, CSC will send each finalist a packet of information detailing the interview process during the placement workshop in Charleston. This packet will include information on each of the final seven coastal resource management projects, the host agencies, and background on the area of assignment. No contact between prospective hosts and finalists should be made prior to the placement workshop.

Other Requirements

Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no objection on the part of DOC to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Delinquent Federal Debts

No award of Federal Funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications

All Sea Grant Programs preparing grant applications must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and explanations are hereby provided:

Non-procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government side Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower-tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Buy American-Made Equipment or Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection-of-information has been approved by OMB, OMB Control Numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Dated: February 20, 1997.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–5265 Filed 3–3–97; 8:45 am]

BILLING CODE 3510–12–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

February 25, 1997

The Corporation for National and Community Service (CNCS) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service Deputy Director, AmeriCorps Leaders Program, Julie Catlett, (202) 606–5000, Extension 164.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503. (202) 395–7316, within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Leaders Program Site Application.

OMB Number: 3045–0007

Affected Public: Not-for-Profit Institutions

Number of Respondents: 150.

Estimated Time Per Respondent: 3 Hours.

Total Burden Hours: 450.

Total Annualized capital/startup costs: $6,800.

Total Annual Cost (operating/maintaining systems or purchasing services): $150.

Description: The Corporation for National and Community Service proposes to revise the AmeriCorps Leaders Program Leader Application and Reference Forms and its AmeriCorps Leaders Program Site Application in order to reduce duplication of information gathering.

Dated: February 25, 1997.

Meri C. Ames,

Director, AmeriCorps Leaders Program.

[FR Doc. 97–5245 Filed 3–3–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Class Tuition Waiver for Children of Foreign Personnel Assigned to Partnership for Peace

AGENCY: DoD, DoDDS.

ACTION: Notice.

The Assistant Secretary of Defense (Force Management Policy (ASD(FMP)) issued a memorandum dated July 9, 1995, establishing a class tuition waiver for the space available enrollment of Partnership for Peace (PFP) dependents at the SHAPE International School (SIS) and the Brussels American School (BAS). On January 16, 1997, the ASD(FMP) signed a memorandum that supersedes the 1995 memorandum.

Effective immediately enrollment in the SIS and the BAS on a space-available, tuition-free basis is designated through the end of school year 1997–98, for the dependents of military and diplomatic personnel participating in the PFP Program in Belgium who meet the following criteria: The sponsor must be identified and recommended to the Brussels District Superintendent as eligible under the waiver by the U.S. National Military Representative (USNMR) to the Supreme Headquarters Allied Powers, Europe (SHAPE) for PFP sponsors assigned to the Partnership Coordination Cell, Mons, or other North Atlantic Treaty Organization (NATO) activities in the SHAPE area; or by the Defense Advisor to the U.S. Mission to the NATO for PFP sponsors stationed at NATO Headquarters or other NATO activities in the Brussels area. To be eligible, a PFP sponsor must be assigned specifically for the purposes of performing representational functions within the PFP Program, and the sponsor's principal ''place of duty'' must be a PFP office at NATO command or headquarters in either Mons or Brussels, Belgium.

Notwithstanding the above criteria, children enrolled for school year (SY) 1996–97 pursuant to the June 9, 1995 memorandum, will be enrolled, space-available, tuition-free, through the end of SY 1996–97. Thereafter, to remain eligible, those students and all other PFP students who request enrollment, must meet the above criteria. Commencing with SY 1997–98, enrollment preference will be extended to students who were previously enrolled, in the order in which they registered. All eligible students will be screened to determine the appropriate educational program. Enrollment is contingent upon the availability of space. Tuition is waived only for so long as a student remains eligible under the terms of this memorandum. Students must be disenrolled upon the loss of eligibility, unless space is available to enroll them as tuition-paying students and they pay tuition in accordance with DoD Directive 1342.13.

SUPPLEMENTARY INFORMATION: Copies of DoD Directive 1342.13, ''Eligibility Requirements for Education of Minor Dependents in Overseas Area,'' are available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Questions can be addressed to the Department of Defense Education Activity, Attention: Mr. Robert Terzian, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Dated: February 27, 1997.

L.M. Bynum,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 97–5253 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–M

National Defense Panel; Notice of Meeting

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on March 5 and 6, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. § 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public in order for the Panel to discuss classified material. This notice is less than fifteen days prior to the meeting due to the delayed selection of the panel and the Panel members' desire to accelerate their meeting schedule to meet the legislated reporting timeline.

DATES: March 5 and 6, 1997.

ADDRESSES: Suite, 1931 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first Century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 9:00 a.m. until 5:00 p.m. on March 5 and 6, 1997. The Panel will discuss classified national intelligence information on the international security environment provided by the National Intelligence Council. They will also receive classified briefings from DOD on the Quadrennial Defense Review actions to date.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 697–5136.

Dated: February 27, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5254 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Addition of a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective on April 3, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, HQ USAF/SCMI, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of the Air Force system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on February 25, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 26, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F168 AF SG G

SYSTEM NAME:

Reporting of Medical Conditions of Public Health and Military Significance.

SYSTEM LOCATION:

Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory, 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, medical centers, hospitals and clinics, medical aid stations, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Air Force members and their dependents, civilian Air Force employees, retired Air Force members and their dependents, Air Force Reserve and Air National Guard personnel and foreign national Air Force employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address, home phone, date of birth, and records relating to communicable diseases, occupational illnesses, animal bites, and both completed and attempted suicides.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; powers and duties; delegation by; 29 CFR 1960, Occupational Illness/Injury Reporting Guidelines for Federal Agencies; Air Force Instruction 48-105, Surveillance, Prevention, and Control of Diseases and Conditions of Public Health or Military Significance; and E.O. 9397 (SSN).

PURPOSE(S):

Records from this system of records will be used for ongoing public health surveillance, which is the systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice within the Air Force.

Primary users include appropriate Air Force activity/installation preventive medicine and public health personnel and their major command and Air Force counterparts. Records are used and reviewed by health care personnel in the performance of their duties.

Health care personnel include military and civilian personnel assigned to the Air Force facility where the records are maintained. Students participating in a USAF training program may also use and review records as part of their training program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the officials and employees of the National Research Council and the Department of Veterans Affairs in cooperative studies of the natural history of disease and epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

To officials and employees of local and state governments in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, and other public health and welfare programs.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in 'Note' below.

NOTE: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in machine readable form.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, reportable event, location, or any combination of these.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened. Except when under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software. Computer

terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Local retention may vary, but will be no less than 5 years after the fiscal year to which the records relate. After that time, records may be destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Written requests should contain the full name and signature of the requester.

Requests in person must be made during normal office duty hours Monday through Friday, excluding national and/or local holidays.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Epidemiology Services Branch, Epidemiologic Research Division, Armstrong Laboratory (AL/AOES), 2601 West Gate Road, Suite 114, Brooks Air Force Base, TX 78235–5241, or comparable official of the Public Health Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Written requests should contain the full name and signature of the requester.

Requests in person must be made during normal office duty hours Monday through Friday, excluding national and/or local holidays.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from DOD and Air Force employees involved in the surveillance, prevention, control, and reporting of diseases and conditions of public health or military significance.

Database is compiled using information from personnel, medical, and casualty records, investigative reports, and environmental sampling data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–5237 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Supplemental Environmental Impact Statement on Final Site Selection and Authorization for Implementation of Multi-Purpose Range Complex-Heavy, Camp Shelby, MS; De Soto National Forest, Forrest and Perry Counties, MS

AGENCY: Department of the Army, National Guard Bureau; U.S. Department of Agriculture (USDA), Forest Service.

ACTION: Notice of intent.

SUMMARY: The National Guard Bureau, as co-lead agency with the USDA, Forest Service, will cooperatively participate in the preparation of a Supplemental Environmental Impact Statement (SEIS) to the Final Environmental Impact Statement (FEIS) for Military Training Use of National Forest Lands, Camp Shelby, Mississippi. The SEIS will identify sites evaluated by both agencies for consideration in selection of a final site for the Multi-Purpose Range Complex-Heavy (MPRC–H) location and disclose new information relevant to environmental concerns having a bearing on the proposed action.

Description of Proposed Action

The National Guard Bureau proposes to construct, operate, and maintain a MPRC–H facility within the Operations Area at Camp Shelby. The project area includes National Forest System lands on the De Soto National Forest that are currently utilized for military training activities under terms and conditions of a special use permit issued by the United States Department of Agriculture, Forest Service.

The MPRCH–H is a standard Army gunnery range which has three maneuver avenues. Only ''practice'' ammunition will be fired within the target array. The proposed project would consist of the range operation and control area, the downrange area, and the vehicle holding and maintenance area.

Preliminary Alternatives

Two sites were initially studied in the original special uses EIS. Since that time, numerous alternative sites have been examined by both agencies. Three alternative sites, plus the no action alternative, have been identified for further analysis in this supplement. The surface danger zones all remain within the current buffer zone of the dedicated impact area.

No Action Alternative: The No Action alternative provides a basis for describing the proposed action and other alternatives.

Range 41: This site overlays an existing tank gunnery range (Range 41) in the northern third of the impact area.

FS3: This site is located northeast of the Range 41 site and has a southeasterly orientation directed towards the northeast corner of the dedicated impact area.

FS4; This site is located north of the Range 41 site and has a southeasterly orientation directed towards the northwest corner of the dedicated impact area.

Supplemental EIS Availability

The draft supplement to the spring of 1997. The responsible officials will consider the comments, responses, environmental consequences discussed in the final supplement in making a decision regarding this proposal. Each responsible official will document their decision and reasons for the decision in a Record of Decision (ROD). The Forest Service Record of Decisions will be issued along with the final supplement and will be subject to administrative review (appeal) under 36 CFR 215. The Record of Decision will address the final site selection and authorization for construction and operation of an MPRC–H on Camp Shelby Training Site under a Special Use Permit for occupation and use of National Forest administered lands. A scoping meeting will be scheduled during March 1997 with a draft supplement to follow. Comments and suggestions can be forwarded to the following individuals: (1) Lieutenant Colonel Parker Hills, Public Affairs Office, Mississippi Army National Guard, P.O. Box 5027, Jackson,

Mississippi 39296–5027, telephone (601) 973–6349, facsimile extension 6176; (2) Mr. Jeff Long, Forest Environmental Coordinator, U.S. Forest Service, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, Mississippi 39269, telephone (601) 965–5525, facsimile extension 5519; or (3) Major John Phillippe, National Guard Bureau ILE–E, 111 South George Mason Drive, Arlington, Virginia 22204, telephone (703) 607–7968.

Dated: February 26, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–5270 Filed 3–3–97; 8:45 am]

BILLING CODE 3710–08–M

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 3, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Division, U.S. Army Publishing and Records Management Center, ATTN: SAIS-PRP-DR, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (703) 806–3389 or DSN 656–3389.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0025–6USAISC

SYSTEM NAME:

Military Affiliate Radio System *(August 3, 1993, 58 FR 41251).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0025–6USASC'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013; DoD Directive 4650.2; and Field Manual 11–490–7'.

* * * * *

RETRIEVABILITY:

Add to entry 'and amateur and/or MARS call signs'.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor to perform their duties. Automated records are further protected by a password assigned to designated persons.

RETENTION AND DISPOSAL:

Delete entry and repace with 'Signed receipts are destroyed after 5 years, or 1 year after termination of membership, and then destroyed by shredding.'

* * * * *

A0025–6USASC

SYSTEM NAME:

Military Affiliate Radio System.

SYSTEM LOCATION:

U.S. Army Signal Command, Fort Huachuca, AZ 85613–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having a valid amateur radio station license issued by the Federal Communications Commission who apply for membership in the Army Military Affiliate Radio System (MARS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, home address and telephone number, licensing data and call-sign provided by Federal Communications Commission, Army MARS call-sign, relevant inquiries/records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; DoD Directive 4650.2; and Field Manual 11–490–7.

PURPOSE(S):

To provide a potential reserve of trained radio communications personnel for military duty when needed and/or to provide auxiliary communications for military, civil, and/or disaster officials during periods of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System Program and to federal supply agencies in connection with individual's participation in the Army MARS Equipment Program.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper in file folders, computer tapes, discs, listings.

RETRIEVABILITY:

By member's name, and amateur and/or MARS call signs.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor to perform their duties. Automated records are further protected by a password assigned to designated persons.

RETENTION AND DISPOSAL:

Signed receipts are destroyed after 5 years, or 1 year after termination of membership, and then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to the

Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

Individual should provide the name under which licensed is the Army MARS program, amateur and or MARS call sign, present address, call sign, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Signal Command, ATTN: AFSC-OPT-BC, Fort Huachuca, AZ 95613–5000.

Individual should provide the name under which licensed is the Army MARS program, amateur and or MARS call sign, present address, call sign, and signature.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and the Federal Communications Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–5238 Filed 3–3–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–3]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997.

Purpose of Program

This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants

To be eligible to apply, an applicant must be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4; have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725 (b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under *Available Funds.*

Deadline for Transmittal of Applications: April 30, 1997.

Deadline for Intergovernmental Review: June 29, 1997.

Applications Available: March 7, 1997.

Available Funds: $101,587 as distributed in the following manner: Washington, $101,587.

Estimated Range of Awards: $101,587.

Estimated Number of Awards: 1 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77,79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 364 and 366.

For Applications or Further Information Contact: John Nelson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3326 Switzer Building, Washington, D.C. 20202–2741. Telephone (202) 205–9362. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be downloaded from the Rehabilitation Services Administration's electronic bulletin board, telephone (202) 205–5574 (2400 bps) and (202) 205–9950 (9600 bps) or from the World Wide Web (at http://www.ed.gov/offices/OSERS/RSA/rsakits.html); and can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for this competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 721 (c) and (e) and 796(f)

Dated: February 25, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–5217 Filed 3–3–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 96–99–LNG]

Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Application to Amend Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on December 31, 1996, by Phillips Alaska Natural Gas Corporation (PANGC) and Marathon Oil Company (Marathon) requesting that DOE approve a five-year extension of their long-standing authorization to export Alaskan liquefied natural gas (LNG) from Alaska to Japan. The gas would be liquefied at the applicants' Kenai LNG plant in the Cook Inlet area of Alaska and would be transported by tanker to Japan for sale to Tokyo Electric Power Company, Inc. (Tokyo Electric) and Tokyo Gas Company, Ltd. (Tokyo Gas).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, Motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, April 3, 1997.

ADDRESSES: Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–

056, FE–50, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Fleming, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9387

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–40, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Background

PANGC, a Delaware corporation with its principal place of business in Bartlesville, Oklahoma, is a wholly owned subsidiary of Phillips Petroleum Company, a Delaware corporation. Marathon, an Ohio corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of USX Corporation, also a Delaware corporation. PANGC and Marathon are not affiliated with each other.

The LNG export authorization held by PANGC and Marathon was granted originally by the Federal Power Commission (FPC) on April 19, 1967. It was subsequently amended by DOE's Economic Regulatory Administration in 1982, 1986, 1987, and 1988, and by FE in 1991, 1992, and 1995. PANGC and Marathon are currently authorized to export up to 64.4 trillion Btu (approximately 64.4 billion cubic feet (Bcf)) of LNG per year through March 31, 2004. See FPC Order No. 1227 (37 FPC 777, April 19, 1967); DOE/ERA Opinion and Order No. 49 (1 ERA ¶ 70,116, December 14, 1982); DOE/ERA Opinion and Order No. 49A [1] (1 ERA ¶ 70,127, April 3, 1986); DOE/ERA Opinion and Order No. 206 (1 ERA ¶ 70,128, November 16, 1987); DOE/ERA Opinion and Order No. 261 (1 ERA ¶ 70,130, July 28, 1988); DOE/FE Opinion and Order No. 261–A (1 FE ¶ 70,454, June 18, 1991; DOE/FE Opinion and Order No. 261–B [2] (1 FE ¶ 70,506, December 19, 1991); DOE/FE Opinion and Order No. 261–C (1 FE ¶ 70,607, July 15, 1992); and DOE/FE Opinion and Order No. 261–D (1 FE ¶ 71,087, March 2, 1995) (herein collectively referred to as Order 261).

PANGC and Marathon request that FE amend the export authorization granted by Order 261 to approve the continued exportation of LNG for an additional five years commencing April 1, 2004, and extending through March 31, 2009, using existing facilities. During the five-year extension, the natural gas to be exported would be produced from gas fields owned or controlled by PANGC and Marathon in the Cook Inlet area of Alaska. The natural gas would be manufactured into LNG at the existing liquefaction plant near Kenai, Alaska.[3]

The pricing and other provisions in the applicants' current LNG sales contracts with Tokyo Electric and Tokyo Gas would remain the same during the extension period. Order 261 authorizes a market-sensitive pricing formula under which the monthly selling price per MMBtu of LNG exported to Japan by PANGC and Marathon is adjusted each month according to changes over a period of three months in the selling price of all crude oils imported into Japan as reported in Japan Exports & Imports Monthly which is edited by the Customs Bureau, Ministry of Finance, and published by the Japan Tariff Association.

PANGC and Marathon and the Japanese buyers of the LNG have held discussions concerning the LNG purchase and sale to facilitate planning their respective operations. Pursuant to such discussions, the Parties negotiated and executed a Letter Agreement dated May 17, 1993, attached as Appendix A to the application, in which the Parties agreed to the contract extension. The extension is subject to PANGC and Marathon providing written acceptance of such extension to Tokyo Electric and Tokyo Gas on or before March 31, 2001.

Public Interest Considerations

In support of their application, PANGC and Marathon state there is no evidence of domestic need, either regional or national, for the natural gas they would export during the proposed extension. According to the applicants, the Cook Inlet area of Alaska continues to have an oversupply of natural gas and, based on two studies submitted with their application, PANGC and Marathon conclude estimates of remaining gas reserves in Alaska, and the Cook Inlet area in particular, are adequate to supply local and regional need beyond the 2004–2009 extension period.[4] Applicants project that under the more pessimistic of the two scenarios examined, the low supply/high demand scenario, remaining reserves would exceed 1.2 trillion cubic feet (Tcf) at the end of 2009, a figure that climbs to 2.0 Tcf under the expected and less conservative supply/demand scenario.

With respect to national need, PANGC and Marathon state that gas supplies in the lower 48 states are sufficient to meet demand and under existing economic conditions LNG could not be shipped to the lower 48 at market clearing prices. The applicants emphasize there are no existing or anticipated West Coast LNG receiving terminals and the cost of shipping Kenai LNG to terminals on the East Coast of the lower 48 makes that alternative improbable. Furthermore, PANGC and Marathon state there are extensive Canadian gas reserves available for export to the lower 48 states at prices lower than those necessary to support Alaskan LNG.

PANGC and Marathon assert the five-year extension of their authority to export Cook Inlet LNG from Kenai to Japan would extend the current benefits now enjoyed by the Kenai Peninsula Borough, the State of Alaska, and the United States in general, and is therefore consistent with the public interest. According to the applicants, cessation of exports of LNG to Japan would end these benefits, forcing the closure of the Kenai liquefaction plant with the resultant estimated loss of over 800 jobs generating over $40 million [5] in personal income per year. The applicants also state the cessation of exports would reduce local, state, and federal revenue from taxes and royalties, revenues which totaled nearly $44 million in 1995. Finally, PANGC and Marathon note the potential detrimental effects on the U.S./Japan balance of payments.

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the Natural Gas Act, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486) and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In reviewing LNG exports, DOE considers domestic

[1] In ERA Opinion and Order No. 49A the authorization previously granted to Phillips Petroleum Company to export LNG was transferred to Phillips 66 Natural Gas Company effective January 1, 1986.

[2] In DOE/FE Opinion and Order No. 261–B the authorization previously granted to Phillips 66 Natural Gas Company to export LNG was transferred to PANGC effective December 19, 1991.

[3] The Kenai LNG plant is owned by Kenai LNG Corporation, 70 percent of which is owned by PANGC and 30 percent by Marathon.

[4] See Resource Decisions, Economic Analysis of Regional and Local Interest Relating to Kenai LNG Export to Japan (December 11, 1996) included as Appendix C to the application of PANGC and Marathon filed December 31, 1996; Schlumberger GeoQuest Reservoir Technologies, Proven Reserves Assessment Cook Inlet Alaska Effective January 1, 1996 (March 1996) included as Appendix D to the application of PANGC and Marathon filed December 31, 1996.

[5] In 1995 dollars.

need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

PANGC and Marathon assert that the gas will not be needed domestically during the extension period and the export is otherwise consistent with the public interest. Parties that oppose extending the PANGC/Marathon export should comment on the specific statements of the applicants, including conclusions in the two studies submitted as part of the application. Opponents will bear the burden of demonstrating the proposed export extension is not consistent with the public interest.

The National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed action. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Natural Gas & Petroleum Import & Export Activities at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PANGC's and Marathon's application is available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 25, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 97–5257 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for Upper Snake River Fish Culture Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to purchase an existing fish hatchery suitable for remodeling and operation as a fish hatchery for domestic rainbow trout and testing facility for potential rearing of native Yellowstone cutthroat and redband trout.

Three alternative hatcheries are being evaluated for purchase and remodeling; two are located in Bingham County, Idaho and one in Power County, Idaho. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATE: Comments are due to the address below no later than March 19, 1997.

ADDRESSES: Submit comments to the Public Involvement Office, Bonneville Power Administration—ACS, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Colleen Spiering, Environmental Project Lead—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5756, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: Houghland Farm (sec. 25, T. 4 S., R. 32 E. and sec. 30, T.4 S., R. 33 E) is located in Bingham County, Idaho between Springfield and the McTucker Springs Recreational Area. Papoose Springs (sec. 1, T. 6 S., R. 33 E. and sec. 6, T. 6 S,. R. 34 E) site is located in Power County, Idaho on Tank Farm Rd. near Siphon Rd. Jackson Ranch (sec 31, T. 3 S., R. 34 E. and sec 6, T. 4 S., R. 34 E). is located in Bingham County, Idaho on Jackson Troutfarm Rd. near Ferry Butte Rd. There is a possibility that Floodplains and Wetlands could be impacted as a result of this project.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on February 24, 1997.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 97–5255 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–201–001]

National Fuel Gas Supply Corporation; Notice of Proposed Chances in FERC Gas Tariff

February 26, 1997.

Take notice that on February 24, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of April 1, 1997.

National Fuel states that the filing is to supplement its December 23, 1996, Section 4 filing at Docket No. RP97–201. National Fuel states that the purpose of the filing is: (1) to postpone the effective date of the proposed Interconnect Agreement requirement until June 1, 1997, when all interstate pipelines will be in compliance with the GISB Standards, and (2) to withdraw its proposed tariff changes that contemplate the introduction of a new enhanced electronic bulletin system, as it now plans to develop a system that relies on internet based communications.

National Fuel states that it is serving copies of the filing upon all parties to this proceeding, firm customers and interested state commissions. National Fuel states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5221 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–264–000]

Northern Border Pipeline Company; Notice of Application

February 26, 1997.

Take notice that on February 24, 1997, Northern Border Pipeline Company (Northern Border), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed an application with the Commission in Docket No. CP97–264–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and Section 9 of the Alaskan Natural Gas Transportation Act (ANGTA) for permission and approval to abandon certain individual natural gas transportation arrangements with Pan-Alberta Gas (U.S.) Inc. (PAGUS), which were authorized in Docket Nos. CP78–124–013, CP93–3–000, and CP94–22–000, all as more fully set forth in the application which is open to the public for inspection.

Northern Border proposes to abandon its firm transportation of a total of 800 MMcf of natural gas per day for PAGUS. Northern Border states that is transports said gas for PAGUS under the terms of three U.S. shipper service agreements under its FERC Rate Schedule T–1. Northern Border and PAGUS are parties to service agreements dated October 7, 1989, for 450 MMcf per day; October 1, 1992, for 150 MMcf per day; and October 1, 1992, for 200 MMcf per day. Northern Border states that it proposes to abandon its currently authorized Section 7(c) transportation services under these three service agreements at the request of PAGUS in order to convert to Part 284 transportation service. Northern Border also states that PAGUS indicated in its request to Northern Border that the proposed conversion would facilitate increaed operating flexibility, allow access to new interconnections as they develop, and would allow PAGUS to more fully use the capacity release provisions under Part 284.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5218 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–407–011]

Questar Pipeline Company; Notice of Tariff Filing

February 26, 1997.

Take notice that on February 21, 1997, Questar Pipeline Company, (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Substitute Alternate Fifth Revised Sheet No. 5, and Third Substitute Third Revised Sheet No. 6A, to be effective February 1, 1996.

Questar states that the proposed tariff sheets respond to the Commission's February 6, 1997 letter order in Docket No. RP95–407–010.

Questar states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5220 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–203–001]

Questar Pipeline Company; Notice of Tariff Filing

February 26, 1997.

Take notice that on February 21, 1997, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet Nos. 81A, and 82 and Substitute Original Sheet No. 82A to be effective January 23, 1997.

Questar explains that the proposed tariff sheets revise Section 12.13 of the General Terms and Conditions of Part I of Questar's tariff by incorporating tariff language as directed by the January 22, 1997, Commission letter order, issued in Docket No. RP97–203. The revised Section 12.13 implements a mechanism for tracking fuel-use and lost-and-unaccounted-for gas to be effective January 23, 1997.

Questar states that it has included a response to the protest filed by Conoco Inc. as directed by the January 22, 1997, letter order.

Questar further states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5222 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1494–118]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

February 26, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) reviewed the application for non-project use of project lands for the Pensacola Hydroelectric Project. The application proposes to excavate approximately 15,000 to 20,000 cubic yards of shoreline and lake bottom material from the Grand Lake O' the Cherokees, in Delaware County, Oklahoma, in order to raise the applicant's property and access road to elevation 757 feet Pensacola Datum to prevent flooding and retain access to the site during high water. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the non-project use of project lands would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 1A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–5219 Filed 3–3–97; 8:45 am]

BILLING CODE 6717–01–M

Southeastern Power Aministration

Intent To Formulate Revised Power Marketing Policy Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the Federal Register of July 6, 1978, Southeastern intends to revise its marketing policy for future disposition of power from its Cumberland System of Projects.

The current power marketing policy published on August 5, 1993, for the Southeastern Power Administration's (Southeastern) Cumberland System is reflected in contracts for the sale of system power which are maintained in Southeastern's headquarter's offices. Proposals and recommendations for consideration in formulating the proposed revised marketing policy are solicited, as are requests for further information or consultation.

EFFECTIVE DATE: Comments must be submitted on or before April 3, 1997.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

FOR FURTHER INFORMATION CONTACT: Charles A. Borchardt, Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: A ''Final Power Marketing Policy for the Cumberland System of Projects'' was developed and published in the Federal Register on August 5, 1993, 58 FR 41762 by Southeastern. Transmission contracts under this policy with Tennessee Valley Authority (TVA) and Carolina Power & Light (CP&L) are in the process of renegotiation. A contract with Kentucky Utilities Company (KU) for power allocated to municipal preference customers in the KU area was executed December 31, 1996. The Cumberland System consists of Barkley, Center Hill, Cheatham, Cordell Hull, Dale Hollow, Laurel, Old Hickory, J. Percy Priest, and Wolf Creek projects. The power from the projects is currently marketed to Preference Customers located in the service areas of TVA, Big Rivers Electric Corporation, CP&L (Western Division), East Kentucky Power Cooperative, KU, Municipal Energy Agency of Mississippi, the seven cooperative members of South Mississippi Electric Power Association currently receiving Cumberland power, and Southern Illinois Power Cooperative. The policy establishes the marketing area for system power and deals with the allocation of power among or for the benefit of area customers. It also deals with utilization of area utility systems for essential purposes, wholesale rates, resale rates, and energy and economic efficiency measures.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the Department of Army. Southeastern has negotiated transmission contracts with area utilities described previously under this authority. To pay the transmission fees under these contracts to area utilities Southeastern must obtain an appropriation each year in a budget approved by Congress and the President. Because of budget

constraints, Southeastern has had difficulty in obtaining these appropriations. This difficulty has compelled Southeastern to consider selling the government power at the bus bar of the projects. Southeastern requests comments on this change in its marketing policy. The current policy does not contemplate such a disposition of the power from the projects.

Issued in Elberton, Georgia, February 20, 1997.

Charles A. Borchardt,

Administrator.

[FR Doc. 97–5258 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–P

Southeastern Power Administration

Intent To Formulate Revised Power Marketing Policy Kerr-Philpott System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the Federal Register of July 6, 1978, Southeastern intends to revise its marketing policy for future disposition of power from its Kerr-Philpott System of Projects. The current power marketing policy published on July 29, 1985, for the Southeastern Power Administration's (Southeastern) Kerr-Philpott System is reflected in contracts for the sale of system power which are maintained in Southeastern's headquarter's offices. Proposals and recommendations for consideration in formulating the proposed revised marketing policy are solicited, as are requests for further information or consultation.

EFFECTIVE DATE: Comments must be submitted on or before May 5, 1997.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

FOR FURTHER INFORMATION CONTACT: Charles A. Borchardt, Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: A ''Final Power Marketing Policy for the Kerr-Philpott System of Projects'' was developed and published in the Federal Register on July 29, 1985, 50 FR 30752 by Southeastern. Transmission contracts under this policy were effective with Virginia Electric and Power Company (VEPCO) and Carolina Power & Light Company (CP&L) on February 1, 1987, and Appalachian Power Company (APCO) on June 30, 1987.

The Kerr-Philpott System consists of two projects, the John H. Kerr and the Philpott project. The power from the projects is currently marketed to Preference Customers located in the service areas of VEPCO, CP&L and APCO. The policy establishes the marketing area for system power and deals with the utilization of area utility systems for essential purposes. The policy also deals with wholesale rates, resale rates, and conservation measures.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the Department of Army. Southeastern has negotiated transmission contracts with area utilities described previously under this authority. To pay the transmission fees under these contracts to area utilities Southeastern must obtain an appropriation each year in a budget approved by Congress and the President. Because of budget constraints, Southeastern has had difficulty in obtaining these appropriations. This difficulty has compelled Southeastern to consider selling the government power at the bus bar of the projects. Southeastern requests comments on this change in its marketing policy. The current policy does not contemplate such a disposition of the power from the projects.

Issued in Elberton, Georgia, February 20, 1997.

Charles A. Borchardt,

Administrator.

[FR Doc. 97–5259 Filed 3–3–97; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration; Proposed Rates for Central Valley and California-Oregon Transmission Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration (Western) is proposing rates (Proposed Rates) for Central Valley Project (CVP) commercial firm power, power scheduling service, CVP transmission, transmission of CVP power by others, network transmission, California-Oregon Transmission Project (COTP) transmission, and ancillary services. The current rates expire April 30, 1998. The Proposed Rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. The rate impacts are detailed in a rate brochure to be provided to all interested parties. The Proposed Rates are scheduled to go into effect on October 1, 1997, to correspond with the start of the Federal fiscal year, and will remain in effect through September 30, 2002. This Federal Register notice initiates the formal process for the Proposed Rates.

DATES: The consultation and comment period will begin from the date of publication of this Federal Register notice and will end June 2, 1997. A public information forum at which Western will present a detailed explanation of the Proposed Rates is scheduled for March 25, 1997, beginning at 9 a.m. PST, at the Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710. A public comment forum at which Western will receive oral and written comments is scheduled for April 22, 1997, beginning at 9 a.m. PDT, at the same location. Western should receive written comments by the end of the consultation and comment period to be assured consideration.

ADDRESSES: Written comments are to be sent to: James C. Feider, Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710.

FOR FURTHER INFORMATION CONTACT: Debbie Dietz, Rates Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4453.

SUPPLEMENTARY INFORMATION: The Proposed Rates for CVP commercial firm power are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchase power, and operation and maintenance expense. A cost of service study allocates the projected annual revenue requirement for commercial firm power between capacity and energy. The capacity revenue requirement includes 100 percent of capacity purchase costs, 50 percent of the investment repayment, interest expense, and power operation and maintenance expense allocated to commercial power, and 100 percent of fixed transmission expense. These annual costs are reduced by the projected revenue from sales of CVP transmission to determine the capacity

revenue requirement. The energy revenue requirement includes 100 percent of energy purchase costs and 50 percent of the investment repayment, interest expense, and power operation and maintenance expense allocated to commercial power. These annual costs are reduced by the projected revenue from sales of surplus power to determine the energy revenue requirement. The resulting capacity/energy revenue requirement split varies from 51 percent allocated to capacity in fiscal year (FY) 1998 to 44 percent allocated to capacity in FY 2002. The average capacity/energy revenue requirement split for the five-year period is 47 percent to capacity and 53 percent to energy.

The Proposed Rates will also include an Annual Energy Rate Alignment (AERA). The AERA will be applied to firm energy purchases from Western at or above an average annual load factor of 80 percent. The AERA is the difference between the estimated market purchase rate used in the cost of service study for CVP commercial firm power and the CVP energy rate. The billing for the AERA will occur at the end of each fiscal year.

The Proposed Rates for CVP commercial firm power, applicable revenue requirement split between capacity and energy, and the AERA are provided in Table 1 below.

TABLE 1.—PROPOSED COMMERCIAL FIRM POWER RATES

Effective period	Total composte (mills/kWh)	Capacity ($/kW-mo)	Energy (mills/kWh)	Capacity/ energy split	AERA (mills/kWh)
10/01/97 to 09/30/98	20.64	5.00	10.11	51/49	3.06
10/01/98 to 09/30/99	19.59	4.57	9.98	49/51	3.65
10/01/99 to 09/30/00	19.59	4.51	10.10	49/51	4.01
10/01/00 to 09/30/01	18.59	3.95	10.30	45/55	4.30
10/01/01 to 09/30/02	20.09	4.15	11.35	44/56	3.76

The Deputy Secretary of the Department of Energy (DOE), approved the existing Rate Schedule CV–F8 for CVP commercial firm power on September 19, 1995 (Rate Order No. WAPA–72, 60 FR 52671, October 10, 1995), and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on March 14, 1996, under FERC Docket No. EF95–5012–000 (74 FERC ¶ 62,136). The existing Rate Schedule CV–F8 became effective on October 1, 1995, for the period ending April 30, 1998. Under Rate Schedule CV–F8, the composite rate on October 1, 1997, is 26.50 mills per kilowatt-hour (mills/kWh), the base energy rate is 16.93 mills/kWh, the tier energy rate is 26.48 mills/kWh, and the capacity rate is $4.58 per kilowatt-month (kW-mo). The Proposed Rates for CVP commercial firm power will result in an overall composite rate decrease of approximately 22 percent on October 1, 1997, when compared with the current CVP commercial firm power rates under Rate Schedule CV–F8. Table 2 provides a comparison of the current rates in Rate Schedule CV–F8 and the Proposed Rates along with the percentage change in the rates.

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED RATES

[Percentage Change in Commercial Firm Power Rates]

Effective period	Total composite (mills/kWh)	Percent change	Capacity ($/kW-mo)	Percent change	Base energy (mills/kWh)	Percent change
Current Rate Schedule						
Existing 10/01/97 and thereafter	26.50	.....	4.58	.....	16.93	.....
Proposed Rates						
10/01/97 to 09/30/98	20.64	−22	5.00	+9	10.11	−40
10/01/98 to 09/30/99	19.59	−26	4.57	.....	9.98	−41
10/01/99 to 09/30/00	19.59	−26	4.51	−2	10.10	−40
10/01/00 to 09/30/01	18.59	−30	3.95	−14	10.30	−39
10/01/01 to 09/30/02	20.09	−24	4.15	−9	11.35	−33

Adjustment Clauses Associated With the Proposed Rates for CVP Commercial Firm Power

Power Factor Adjustment

This provision contained in Rate Schedule CV–F8, will remain the same under the Proposed Rates for CVP commercial firm power.

Low Voltage Loss Adjustment

This provision contained in Rate Schedule CV–F8, will remain the same under the Proposed Rates for CVP commercial firm power.

Revenue Adjustment

The methodology for the Revenue Adjustment contained in Rate Schedule CV–F8, will remain the same under the Proposed Rates for CVP commercial firm power.

Proposed Rate for Power Scheduling Service

The Proposed Rate for power scheduling service is $73.80 per hour and is based on an estimated time to provide the service. Power scheduling service provides for the scheduling of resources to meet loads and reserve requirements.

Proposed Rates for CVP Transmission

The Proposed Rate for firm CVP transmission service is $0.48 per kW-mo., an 11.6 percent increase from the existing rate of $0.43 per kW-mo. currently under Rate Schedule CV–FT2. The Proposed Rate for non-firm CVP transmission service is 1.00 mill/kWh, an 18.7 percent reduction in the existing 1.23 mills/kWh rate. Service of firm or non-firm transmission for one year or less may be at rates lower than the Proposed Rates.

The Proposed Rates for CVP transmission service are based on a revenue requirement that recovers: (i) The CVP transmission system costs for facilities associated with providing all transmission service; and (ii) the non-facilities costs allocated to transmission service. These rates include the cost for scheduling, system control and dispatch service, and reactive supply and voltage control associated with the transmission service. The Proposed Rates are applicable to existing CVP firm transmission service and future point-to-point transmission service.

Proposed Rate for Transmission of CVP Power by Others

Transmission service costs incurred by Western in the delivery of CVP power over a third party's transmission system to a CVP customer, will be directly passed through to that CVP customer. Rates under this schedule are proposed to be automatically adjusted as third party transmission costs are adjusted.

Proposed Rate for Network Transmission

The Proposed Rate for network transmission service, if offered by Western, is the product of the network customer's load ratio share times one-twelfth (1/12) of the annual network transmission revenue requirement. The load ratio share is based on the network customer's hourly load coincident with Western's monthly CVP transmission system peak minus coincident peak for all firm CVP (including reserved capacity) point-to-point transmission service. The Proposed Rate for network transmission service is based on a revenue requirement that recovers: (i) The CVP transmission system costs for facilities associated with providing all transmission service; and (ii) the non-facilities costs allocated to transmission service. These rates include the cost for scheduling, system control and dispatch service, and reactive supply and voltage control needed to provide the transmission service.

Proposed Rates for COTP Transmission

The Proposed Rates for firm transmission service for Western's share of the California-Oregon Transmission Project (COTP) are $1.66 per kW-mo. for FY 1998 and $1.12 per kW-mo. for FY 1999 through FY 2002. These Proposed Rates for firm COTP transmission service result in 18.2 percent (FY 1998) and 44.8 percent (FY 1999 through FY 2002) reductions in the existing rate of $2.03 per kW-mo. The Proposed Rates for non-firm COTP transmission service are 2.28 mills/kWh for FY 1998 and 1.54 mills/kWh for FY 1999 through FY 2002. These Proposed Rates for non-firm COTP transmission service result in 18.0 percent (FY 1998) and 44.6 percent (FY 1999 through FY 2002) reductions in the existing rate of 2.78 mills/kWh. Service of firm or non-firm transmission for one year or less may be at rates lower than the Proposed Rates.

The Proposed Rates for COTP transmission service are based on a revenue requirement that recovers the costs associated with: (i) Western's participation in the COTP; (ii) the offering of this service; and (iii) scheduling, system control and dispatch service, and reactive supply and voltage control needed to provide the transmission service. The Proposed Rates are applicable to existing COTP transmission service and future point-to-point transmission service.

Proposed Rates for Ancillary Services

Western will provide ancillary services, subject to availability, at the Proposed Rates listed in Table 3. The Proposed Rates are designed to recover only the costs incurred by Western for providing the service(s). Sales of ancillary services of one year or less may be at rates lower than the Proposed Rates.

TABLE 3.—PROPOSED CVP ANCILLARY SERVICES RATES

Ancillary service type	Rate
Transmission Scheduling, System Control and Dispatch Service—is required to schedule the movement of power through, out of, within, or into a control area	Included in appropriate transmission rates.
Reactive Supply and Voltage Control—is reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system	Included in appropriate transmission rates.
Regulation and Frequency Response Service—providing generation to match resources and loads on a real-time continuous basis.	Monthly: $1.39 per kW-mo. Weekly: $0.3192 per kW-week. Daily: $0.0456 per kW-day.
Energy Imbalance Service—is provided when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single month	Within Limits of Deviation Band: Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged with like hours of energy or charged at the composite rate for CVP commercial firm power, then in effect.
Hourly Deviation (MW) is the net scheduled amount of energy for the hour minus the hourly net metered (actual delivered) amount.	Outside Limits of Deviation Band: (I) Positive Deviations—no charge, lost to the system. (ii) Negative Deviations—during on-peak hours, the greater of 3 times the Proposed Rates for CVP commercial firm power or any additional cost incurred. During off-peak hours, the greater of the Proposed Rates for CVP commercial firm power or any additional cost incurred.
Spinning Reserve Service—is providing capacity that is available the first ten minutes to take load and is synchronized with the power system	Monthly: $1.14 per kW-mo. plus adder. Weekly: $0.2688 per kW-wk. plus adder. Daily: $0.0384 per kW-day plus adder. Hourly: $0.0016 per kWh plus adder. Adder for purchasing energy to motor unit will be at market purchase rate.

TABLE 3.—PROPOSED CVP ANCILLARY SERVICES RATES—Continued

Ancillary service type	Rate
Supplemental Reserve Service—is providing capacity that is not synchronized, but can be available to serve loads within ten minutes	Monthly: $1.14 per kW-mo. Weekly: $0.2688 per kW-wk. Daily: $0.0384 per kW-day. Hourly: $0.0016 per kWh.

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the Proposed Rates (and as amended) for approval on an interim basis by the Deputy Secretary of DOE.

Power and transmission rates for the CVP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and Acts of Congress approved August 26, 1937 (50 Stat. 844, 850); August 12, 1955 (69 Stat. 719); and October 23, 1962 (76 Stat. 1173, 1191), and Acts amendatory or supplementary thereof.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents made or kept by Western for developing the Proposed Rates, are and will be made available for inspection and copying at the Sierra Nevada Region Office, located at 114 Parkshore Drive, Folsom, California 95630–4710.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that (1) this rulemaking relates to services offered by the Sierra Nevada Region and therefore is not a rule within the purview of the Act, and (2) the proposed rates for the services offered by the Sierra Nevada Region would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this Federal Register notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Environmental Compliance

Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR Parts 1500 through 1508); and the DOE NEPA Implementing Procedures and Guidelines (10 CFR Part 1021), Western conducts environmental evaluations of the proposed rates and develops the appropriate level of environmental documentation.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget for the collection of customer information in this rule, under control number 1910–1200.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Issued at Golden, Colorado, February 20, 1997.

J.M. Shafer,

Administrator.

[FR Doc. 97–5256 Filed 3–4–97; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237]

Change in Time for March 11, 1997 Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 27, 1997, the Commission released a public notice announcing a change in the time for the March 11 meeting of the North American Numbering Council (NANC). The March 11 meeting and its agenda had been announced in a public notice published in the Federal Register on February 26, 1997 (*See* 62 FR 8741). The intended effect of this action is to make the public aware that the time of the March 11 NANC meeting has changed from 9:30 A.M. EST, to 8:30 A.M. EST.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, (202) 418–2330. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: February 27, 1997. The FCC, in a Public Notice released February 21, 1997, and published in the Federal Register on February 26, 1997 (*See* 62 FR 8741), announced the March 11, 1997 meeting of the North American Numbering Council (NANC) and the agenda for this meeting. The Public Notice stated that the NANC meeting would commence at 9:30 A.M EST. The NANC has changed the meeting time to 8:30 A.M. EST. The meeting place, the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC, remains the same.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–5348 Filed 3–3–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interagency Policy Statement Regarding Uniform Guideline on Internal Control for Foreign Exchange in Commercial Banks

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (FRB); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of guideline.

SUMMARY: The OCC, FRB, and FDIC (''the Agencies'') are withdrawing their joint guideline entitled: ''Interagency Policy Statement Regarding Uniform Guideline on Internal Control for Foreign Exchange in Commercial Banks,'' dated May 22, 1980 (45 FR 42370, June 24, 1980) (''the Guideline'') because it is considered outdated and has been superseded by other pronouncements from each of the agencies.

EFFECTIVE DATE: The removal of the Guideline is effective March 4, 1997.

FOR FURTHER INFORMATION CONTACT:

FRB: Michael Martinson, Assistant Director, (202)/452–3640), or Joe Sciortino, Supervisory Financial Analyst, (202/452–2294), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Christie Sciacca, Assistant Director, (202/898–3638), Federal Deposit Insurance Corporation, 550 17th St., N.W., Washington, D.C. 20429.

OCC: Leon Tarrant, Manager, (202/874–4730), Office of the Comptroller of the Currency, 250 E Street, S.W., Washington D.C. 20219.

SUPPLEMENTARY INFORMATION: The policy set forth in the Guideline was developed to provide uniformity among the Agencies in establishing minimum standards for documentation, accounting, and auditing for foreign exchange operations in U.S. commercial banks. The Guideline was not intended to be all encompassing as to policies and procedures expected to be found in the most active market participants. Rather, it called for each bank to develop a system of internal control commensurate with the risks to which it is exposed.

The Guideline has become outdated in view of numerous changes that have subsequently taken place, including: the scope and depth of foreign exchange trading activities in banks, new product developments, significant improvements in automated trading systems, and the management of the business along product lines. These conditions prompted each agency to issue subsequent pronouncements and updated examination and/or policy procedures for U.S. banks as well as for foreign banks doing business in the United States.

The Agencies' Action

The Agencies hereby withdraw the Guideline.

Dated: February 27, 1997.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 97–5286 Filed 3–3–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE BOARD

[97–N–1]

Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans

AGENCY: Federal Housing Finance Board.

ACTION: Request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is seeking comments on several aspects of its Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans. The Finance Board seeks comments on whether it should continue to publish mortgage information by lender type. If not, then the Finance Board seeks comments on whether the sampling and weighting design for this survey should draw lenders without regard to lender type. If so, the Finance Board seeks suggestions for alternative sampling and weighting methodologies. The Finance Board also seeks comments on the designation of successor adjustable-rate mortgage indexes if it decides to stop publishing data by lender type.

DATES: Comments must be received by April 18, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie (202) 408–2845, Associate Director, Office of Policy, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Background

The Finance Board is responsible for conducting the Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans. This survey, usually called the ''Monthly Interest Rate Survey'' or ''MIRS,'' asks a sample of approximately 350 mortgage lenders to report the terms and conditions on all conventional mortgage loans for the purchase of single-family, nonfarm homes that they close during the last five working days of the month. The sample of lenders includes savings associations, mortgage companies, commercial banks, and savings banks that have volunteered to participate in the survey. MIRS provides national and regional data on mortgage interest rates, mortgage terms, and house prices. The Finance Board's regulations describe MIRS more thoroughly. *See* 12 CFR 902.3.

From 1963 to September 1989, the former Federal Home Loan Bank Board conducted MIRS. Law requires the Finance Board to conduct this survey. The statutory mandate to conduct MIRS appears in identical provisions in the Federal National Mortgage Association (Fannie Mae) Charter Act, 12 U.S.C. 1717(b)(2), and the Federal Home Loan Mortgage Corporation (Freddie Mac) Act, 12 U.S.C. 1454(a)(2). These provisions allow the two agencies annually to adjust the maximum size of mortgage loans that they can purchase or guarantee by the October-over-October percentage price change in house prices as reported in MIRS.

More recently, the 1994 Department of Housing and Urban Development (HUD) appropriation act tied the high-cost area limits for Federal Housing Administration (FHA)-insured mortgages to the purchase-price limitations of Fannie Mae and Freddie

Mac, thus linking the FHA limits indirectly to MIRS. *See* Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Pub. L. No. 103–327, 108 Stat. 2298 (1994). In addition, the Internal Revenue Service uses the data from MIRS to set the safe-harbor purchase-price limits for mortgages purchased with the proceeds of mortgage revenue bond issues. *See* 26 CFR 6a.103A–2(f)(5).

Beyond its use for indexing the conforming loan limit, MIRS provides information for general statistical purposes and program evaluation. Economic policy makers use the data to determine interest rates, down payments, terms to maturity, terms on adjustable-rate mortgages (ARMs), initial fees and charges on mortgage loans, and other trends in mortgage markets. Information from MIRS regularly appears in the popular and trade press.

On or about the 26th of each month the Finance Board publishes a MIRS press release with mortgage rate and term information by property type (all, newly built, and previously occupied; Table I), by loan type (adjustable-rate and fixed-rate; Table II), and by lender type (savings association, mortgage company, commercial bank, savings bank; Table III), and a table providing data on 15- and 30-year conforming fixed-rate loans (Table V). In addition, it publishes quarterly tables with rate and term information for metropolitan areas (Table IV) and for Federal Home Loan Bank districts (Table VI).

An ARM index derived from MIRS—the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes—was the only ARM index that Federally chartered savings institutions could use for a period in the early 1980's. A very small proportion of existing ARMs may use another interest-rate series from MIRS as an index.

B. Sampling and Weighting the Data

The Finance Board samples all savings associations, mortgage companies, commercial bank, and savings banks for MIRS because it publishes monthly aggregate data by lender type. In addition, the Finance Board samples lenders representing all regions because it publishes quarterly data for 32 selected large metropolitan areas, quarterly data for the 12 Federal Home Loan Bank districts, and annual data for all 50 states and for 60 metropolitan statistical areas (MSAs).

MIRS presents a ''clustered sampling'' problem. The item of interest is individual loans, but the Finance Board must sample lenders to get the individual loan data. The loans must come from all regions and must represent all lender types. Several recent developments have improved the geographical dispersion of MIRS loans. First, some large national mortgage companies participate in MIRS. This means that one lender may report loans from 20 or more states. Second, the continuing trend toward the consolidation of depository institutions has resulted in large institutions that originate loans in many states.

As with most survey data, the tabulated MIRS data reflects the weighting of the individual responses. The current weighting draws depository institutions with equal probabilities of selection from ''lender-type geo strata'' (for example, commercial banks in Nebraska, savings associations from the Cincinnati MSA, or savings banks from the Boston CMSA.) Since the sample of loans reported in a given month may differ from true lending experience (for example, over -or under-represent certain regions), the MIRS data is weighted to comport with information on lending patterns derived from independent sources:

(1) The data is adjusted so that the distribution of loans by lender type matches the lender-type distribution in the latest release of HUD's Survey of Mortgage Lending Activity, and

(2) The data is adjusted so that the distribution of loans by Federal Home Loan Bank district matches the state pattern of mortgage originations annually reported by HUD.

The weighting process builds up the national data from four separate subsamples based on lender type, where the shares of loans by lender type come from the HUD data. On balance, this weighting process significantly increases the importance of loans reported by commercial banks and reduces the importance of loans reported by savings associations because commercial bank loans are under-represented in the sample. Regional adjustment of the data does not have a significant effect on the results because the geographic pattern of responses approximates aggregate lending patterns.

C. Sampling by Lender Type

The Finance Board publishes data by lender type principally because the former Federal Home Loan Bank Board published the data that way when it conducted MIRS. Accordingly, the Finance Board draws four separate subsamples corresponding to savings associations, mortgage companies, commercial banks and, savings banks. As the financial services sector evolves, the distinctions between commercial banks and thrifts continue to erode. If the institutional distinctions between commercial bank and thrift are blurred, then published data by lender type may no longer be useful or meaningful.

While the overall samples of savings associations, savings banks, and mortgage companies are adequate, the Finance Board has had persistent trouble in recruiting commercial banks for the sample. Over the past several years, the Finance Board has contacted more than 2,000 commercial banks, all with at least 10 percent of their assets in residential mortgage loans, and asked them to participate in MIRS. Most of the banks contacted never responded to the solicitation. Many banks that did respond said that either they make no mortgages or that a subsidiary mortgage company originates all the loans that they hold. Many banks that responded positively never submitted any loan data.

Despite the Finance Board's recruitment efforts, only 118 commercial banks reported a total of 5,437 loans in 1996. This represents only 4 percent of the total number of loans reported in 1996. However, HUD's Survey of Mortgage Lending Activity reports that commercial banks originate about one-quarter of all single-family mortgage loans. As a result, the MIRS weighting process weighs up each commercial bank loan by a factor of about six.

While the MIRS sample has few large commercial banks, the overall sample contains many loans originated by the mortgage banking subsidiaries of large commercial banks that have large mortgage investments.

The Finance Board specifically requests comments on the following:

—Should it continue to report MIRS data by lender type?
—Should it continue to sample MIRS lenders by lender type?
—Do institutional changes render the data by lender type meaningless?
—Are there alternative ways to increase commercial bank participation in the sample?

D. Home Mortgage Disclosure Act Data

The HUD data on mortgage originations by lender type is crucial to the MIRS weighting process. However, some observers believe the HUD data may overstate the commercial bank share of mortgage originations. Very few large commercial banks originate mortgage loans. Most of the large commercial banks with significant portfolio concentrations of residential mortgages have purchased these loans from subsidiary mortgage companies

that have significant origination volumes.

Home Mortgage Disclosure Act (HMDA) data may provide an alternative data source for the lender type shares for MIRS. HMDA requires lenders to submit information on single-family mortgage applications. The data includes a disposition code, so it is possible to use HMDA information on loans closed. The scope of the HMDA data includes information on all nonmetropolitan mortgage originations but from the smallest lenders. The more important of these omissions is loans in nonmetropolitan areas. Approximately one-fifth of the nation's population lives outside metropolitan areas. Secondly, very small lenders are not subject to HMDA reporting. The Finance Board specifically requests comments on whether it could or should use the HMDA data as the basis for developing the lender-type adjustment in the MIRS weighting process. The Finance Board also requests comments on whether another data source is available that it could use in developing shares of aggregate lending by lender type.

Beyond the use of the HMDA data to develop the lender-type adjustment, the Finance Board requests comments on whether it could develop a size-stratified weighting scheme based on individual lender origination volumes reported in the HMDA data. A HMDA-based weighting scheme would group lenders by origination volume and sample lenders, without regard to charter type, with decreasing frequency (and increasing weight) as origination volume declines. The implicit assumption is that loans originated by one type of lender (for example, commercial banks) are no different from loans originated by another type of lender.

The Finance Board requests comments on whether it should change its MIRS weighting methodology. Should it adopt a size-stratified weighting methodology using HMDA data? If so, how should it surmount the omission in the HMDA data of nonmetropolitan lending data and loans from small lenders? (The MIRS data now contains loans from nonmetropolitan lenders as well as loans made by metropolitan lenders in nonmetropolitan areas.) Is there another weighting methodology that is more appropriate than either the current methodology or the one suggested that uses the HMDA data?

E. Data Edit Limits

Most statistical surveys incorporate certain validity checks that the data must pass. MIRS contains validity checks or edits on allowable interest-rate ranges, loan sizes, purchase prices, loan fee amounts, and consistency of ZIP code with state of the property. The Finance Board established the current maximum allowable value of $500,000 for loan size and $750,000 for property price in November 1991. These edits would reject loans where the responding lender omitted a decimal point from dollar values, which would have the effect of reporting a loan amount or purchase price 100 times larger than the actual amount. The edits also exclude certain typographical errors, especially when the purchase price contains an extra zero. For example, a reported $50,000 loan on a $900,000 property is more likely to be a $50,000 loan on a $90,000 property. The current edits would reject this transaction.

While the edits screen out incorrect transactions, they also may exclude some valid transactions. Since the Finance Board established the current price and loan-size limits in November 1991, housing prices have increased modestly. The Finance Board seeks comments on an appropriate methodology to adjust the house size and loan amount edit limits to allow for housing price appreciation. The Finance Board does not plan to change the lower loan size and property price limit of $10,000.

While it is not possible precisely to quantify the effect that the changes in the edit limits will have on the reported average house prices, the Finance Board believes the effect will be small because the proportion of loans between the old and any higher new edit limits is likely to be small. MIRS now has few transactions in bands just below the current edit limits. In 1996, only 0.7 percent of MIRS loans had balances between $400,000 and $500,000, and only 1.2 percent of MIRS loans financed homes with prices between $500,000 and $750,000. Transactions in these bands are skewed toward the lower end of the bands. Therefore, the Finance Board expects that only a small fraction of 1 percent of the survey's loans will fall between the old and any higher new edit limits.

F. Adjustable-Rate Mortgage Index

A very small number of ARMs may use as an index a MIRS interest rate series by lender type. This information appears on Table III of the regular monthly MIRS release. If the Finance Board were to adopt a changed MIRS sampling methodology that no longer separately sampled lenders by lender type, then it probably would stop the publication of Table III in the monthly MIRS release.

Section 402(e)(4) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ''FIRREA,'' Public Law No. 101–73, 103 Stat. 183 (August 9, 1989), requires the Chairperson of the Finance Board to designate a ''substantially similar'' successor index if the Finance Board no longer makes available any index from MIRS. If the Finance Board were to stop Table III, then it proposes to designate that the National Average Contract Mortgage Rate for the Purchase of All Homes by Combined Lenders be the successor index for any ARM index that uses a contract rate from Table III. It also proposes to designate the National Average Effective Mortgage Rate for the Purchase of All Homes by Combined Lenders be the successor index for any ARM index that uses an effective rate from Table III. The Finance Board publishes both of the proposed successor index rates in the top panel of Table I in the monthly MIRS release, and the current value of both interest rates is available on a recording maintained by the Finance Board.

The Finance Board is proposing these successor index rates because the loans reported in Table III by lender type include loans on both newly built and previously occupied homes. The proposed successor index rates also include loans on both newly built and previously occupied homes. The only difference is that the data in Table I combines loans from all types of lenders whereas Table III reports mortgage data by type of lender.

The Finance Board seeks comments on these proposed successor index rates.

G. Effective Date and Transition Provisions

The Finance Board would adopt any changes to the MIRS sampling and weighting methodology effective at the beginning of 1998. Before implementing any changes, the Finance Board would consult with the technical staff of other Federal agencies and instrumentalities to obtain their views and suggestions about the MIRS sampling and weighting methodology.

The Finance Board also would make available special tabulations so that Fannie Mae and Freddie Mac would have data calculated on the same basis for their determination of the conforming loan limit for 1999. This calculation would occur in November 1998.

By the Federal Housing Finance Board.

Dated: February 26, 1997.

Rita I. Fair,

Managing Director.

[FR Doc. 97–5266 Filed 3–3–97; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 18, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Louis Ray Jones, Virginia Beach, Virginia; to acquire an additional 14.94 percent, for a total of 24.90 percent, of the voting shares of Resource Bank, Virginia Beach, Virginia.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Carl W. Jones, Minnetonka, Minnesota, Christopher W. Jones, Long Lake, Minnesota, Janet N. Jones, Excelsior, Minnesota; each to acquire 33.33 percent of the voting shares of Harbourside, LP, Wayzata, Minnesota, and thereby indirectly acquire Anchor Bancorp, Inc., Wayzata, Minnesota; Anchor Bank, N.A., Wayzata, Minnesota; Anchor Bank, West St. Paul, N.A., West St. Paul, Minnesota; The Bank of Saint Paul, St. Paul, Minnesota; Heritage National Bank, North St. Paul, Minnesota; and The First National Bank of Farmington, Farmington, Minnesota.

Board of Governors of the Federal Reserve System, February 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5232 Filed 3–3–97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Armstrong Financial Co., Minden, Nebraska; to become a bank holding company by acquiring 80.99 percent of the voting shares of Minden Exchange Co., Minden, Nebraska, and thereby indirectly acquire Minden Exchange Bank & Trust Co., Minden, Nebraska.

2. Commerce Bancshares, Inc., Kansas City, Missouri, and CBI Kansas, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of, and thereby merge with Shawnee Bank Shares, Inc., Shawnee, Kansas, and thereby indirectly acquire Shawnee State Bank, Shawnee, Kansas.

Board of Governors of the Federal Reserve System, February 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5231 Filed 3-3-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, March 10, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5464 Filed 2–28–97; 3:50 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission members will address the bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical. They will also begin a review of the legal and ethical issues associated with the recent report of a technique of cloning sheep. The public is invited to speak on any of these issues and opportunities for statements will be provided.

DATES: Thursday, March 13, 1997, 8:00 a.m. to 4:30 p.m., and Friday, March 14, 1997, 8:00 a.m. to 4:30 p.m.

LOCATION: The Commission will meet at the Watergate Hotel, Continental Chesapeake Extender Room, 2650 Virginia Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The charter of the Commission was signed on July 26, 1996. The first meeting took place on October 4, 1996. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research. On February 24, 1997, the President instructed the Commission to undertake a review of the legal and ethical issues associated with the recent report of a technique for cloning sheep. This scientific discovery raises a host of important issues including serious ethical questions, in particular the possible use of this technique to clone human embryos, as well as the promise of benefits in a number of areas.

Tentative Agenda

The Commission will (1) receive reports from its subcommittees, (2) discuss and plan the Commission's 90-day report to the President on issues of cloning, and (3) listen to presentations from the public.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact the Acting Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the NBAC will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned either on a first come, first serve basis or along other considerations. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record. We urge anyone planning to speak to call the NBAC office two or three days before the meeting to obtain information on the final logistical arrangements.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 25, 1997

Henrietta Hyatt-Knorr,

Acting Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–5207 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–17–P

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC), Genetics Subcommittee

ACTION: Correction Notice for Previously Published Notice (Published on February 26, 1997, page 8743, 2nd Column).

The date is corrected to read: Date: Wednesday, March 5, 1997, 7:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 26, 1997.

Henrietta Hyatt-Knorr,

Acting Deputy Director, National Bioethics Advisory Commission.

[FR Doc. 97–5208 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–17–M

Administration on Aging

[Program Announcement No. AoA–97–2]

Fiscal Year 1997 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to develop new statewide legal hotlines for older Americans and, in addition, to provide technical assistance and guidance to statewide senior legal hotline projects.

SUMMARY: The Administration on Aging announces that it will hold a priority area competition for grant awards for three (3) to four (4) model projects that demonstrate effective ways of planning, developing, and sustaining statewide senior legal hotlines, and for a project to provide appropriate technical assistance to statewide senior legal hotline projects.

The deadline date for the submission of applications is May 15, 1997. Prospective applicants should note that because of the specialized nature of this priority area, they should have a proven track record of experience in providing legal services to the elderly in order to compete successfully for project awards.

Application kits are available by writing to: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, S.W., Room 4274, Washington, DC 20201.

Dated: February 26, 1997.

Robyn I. Stone,

Acting Assistant Secretary for Aging.

[FR Doc. 97–5204 Filed 3–3–97; 8:45 am]

BILLING CODE 4150–40–P

Centers for Disease Control and Prevention

[INFO–97–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. The Fourth National Health and Nutrition Examination Survey (NHANES IV)—New—The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC.

NHANES IV is planned for 1998–2004 to include 40,000 sample persons. They will receive an interview and a physical examination. A pretest of 400 people and a dress rehearsal of 555 are needed to test the sampling process, data collection procedures, computer-assisted personal interviews (including translations into Spanish), examination protocols, automated computer systems and quality control procedures. Participation in the pretest and the full survey will be completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from future NHANES can be compared to those from previous NHANES to monitor changes in the health of the U.S. population. NHANES IV will also establish a national probability sample of genetic material for future genetic testing for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The burden hour estimate in this notice is based on the request for OMB approval for the pretest, dress rehearsal and the first 2.25 years of the full survey. The total cost to respondents for the period covered by this notice and the related request for OMB approval (from 1/98–12/00) is estimated at $952,995.

Respondents	Number of respondents between 1/98–12/00	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
1. Screening interview	34,188	1	.167	5,709
2. Family questionnaire (subset of #1)	5,830	1	.267	1,557
3. Household interview (subset of #1)	11,660	1	.667	7,777
4. Exam (primary) (subset of #3)	8,816	1	5.00 (including travel time)	44,080
5. Replicate exam (10% of #4 above)	882	1	5.00 (including travel time)	4,410
Total				65,533

2. 1998 National Health Interview Survey, Basic Module (0920–0214)—Revision—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the second full year of data collection using the Basic Module on CAPI, and for implementation of the first ''Topical Module'' (or supplement), which is on Health People 2000 Objectives. Ad hoc Topical Modules on various health issues are provided for in the redesigned NHIS. This data collection, planned for January–December 1998, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. In particular, the topical module will provide end-point estimates for many of the Healthy People 2000 Objectives.

The Basic Module of the new data system is expected to be in the field at least until 2006. The total cost to respondents is estimated at $714,000 for the whole survey.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Family	42,000	1	0.5	21,000
Sample adult	42,000	1	0.75	31,500
Sample child	18,000	1	0.25	4,500
Total				57,000

3. National Childhood Blood Lead Surveillance System—(0920–0337)—Reinstatement—Lead poisoning is a common and societally devastating environmental disease of young children in the United States. In response to the call for a national surveillance program of lead levels made in the HHS publication, *Strategic Plan for the Elimination of Childhood Lead Poisoning* (February 1991), CDC established the National Childhood Blood Lead Surveillance System. In FY92, CDC awarded funds to eight states to assist them in developing a complete childhood lead surveillance activity. In FY96, CDC provided funding for childhood blood lead surveillance activity in 31 states and the District of Columbia. Sixteen of these states submitted 1995 (calendar year) data to the national database. Information from this national surveillance system may be used by Federal and state agencies to (1) more accurately estimate the number of children with elevated lead levels; (2) monitor short-term trends; (3) identify clusters of cases; (4) determine geographic distribution of cases; (5) examine risk factors among children with elevated lead levels; (6) identify risk factors for elevated lead levels among specific population groups; (7) target intervention programs to groups at risk for elevated lead levels; and (8) track national progress in eliminating childhood lead poisoning. The total cost to respondents is $8,208.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State Health Departments:				
(a) Annual Report	20	1	10	200
(b) Quarterly Report	32	4	2	256
Total	.....	.....	.....	456

Dated: February 26, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5235 Filed 3–3–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Study of Benefits for Head Start Program Employees.

OMB No.: New Collection.

Description: Head Start legislation requires that the Secretary conduct a study regarding the benefits available to individuals employed by Head Start Agencies including a description of benefits provided and to make recommendations about increasing the access of the individuals to benefits including access to a retirement pension program. The attached instrument is a survey designed to collect information about present benefits provided to employees.

Respondents: Not-for-profit institutions and households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Staff Questionnaire	360	1	.5	180
H.S. Program Director Questionnaire	360	1	2	720
Dir. of Non-H.S. Child Care Program	5	1	2	10
Estimated Total Annual Burden Hours: 210.				

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 26, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–5277 Filed 3–3–97; 8:45 am]

BILLING CODE 4184–01–M

[Program Announcement No. OCS–97–02]

Request for Applications Under the Office of Community Services' Fiscal Year 1997 National Youth Sports Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Request for applications under the Office of Community Services' National Youth Sports Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 682 of the Community Services Block Grant Act of 1981, as

amended. This Program Announcement contains forms and instructions for submitting an application.

For Fiscal Years 1998–2001 the National Youth Sport Program would become a non-competing continuation grant. This means that once the Fiscal Year 1997 grantee has been selected the continuation grant funded under this award beyond the first one year budget period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government. The National Youth Sports Program will be announced again in Fiscal Year 2002.

CLOSING DATE: The closing date and time for receipt of applications is 4:30 p.m., eastern time zone, on May 5, 1997. Applications received after 4:30 p.m. will be classified as late. Postmarks and other similar documents do not establish receipt of an application. Detailed application submission instructions including the addresses where applications must be received are found in Part G.1. of this announcement.

CONTACT: Joseph R. Carroll, Acting Director, Division of Community Discretionary Programs, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, (202) 401–9354.

Part A—Preamble

1. Legislative Authority

Section 682 of the Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make a grant to an eligible service provider to administer national or regional programs designed to provide instructional activities for low-income youth.

2. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is ''CSBG Discretionary Awards.''

3. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—Low-income youth: A youth between the ages of 10 through 16 whose family income does not exceed the DHHS Poverty Income Guidelines.
—Eligible Applicant: A national private nonprofit organization, a coalition of such organizations, or a private nonprofit organization applying jointly with a business concern that has demonstrated experience in operating a program providing instructions to low-income youth.
—Budget period: The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.
—Project period: The total time for which a project is approved for support, including any approved extensions.

Part B—Application Prerequisites

1. Eligible Applicants

OCS will only consider those applications received from entities which are eligible applicants as specified in Part A 3. of this announcement. Non-profit organizations must submit proof of their non-profit status in their applications at the time of submission. Failure to do so will result in rejection of their applications. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of currently valid IRS tax exemption certification, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

2. Number of Grants, Grant Amount, and Matching Requirements

a. Number of Grants

In Fiscal Year 1997, OCS anticipates that one grant will be made under this program. For Fiscal Years 1998–2001, OCS anticipates, subject to the availability of funds, that one grant will be made under this program.

b. Grant Amounts

Estimated twelve million dollars ($12,000,000) is available for Fiscal Year 1997. For Fiscal Years 1998–2001, the estimated amounts of ($12,000,000) are subject to final appropriation.

c. Matching Requirements

The grants require a match of either cash or third party in-kind of one dollar for each dollar awarded up to $9,400,000 and a cash match of 25% of the Federal funds requested in excess of $9,400,000.

3. Project Period and Budget Period

The project period must not exceed 60 months (5 years), with a budget period not to exceed 12 months. A significant amount of the program activities must be undertaken in the period covering June, July and August of each fiscal year.

4. Administrative Costs/Indirect Costs

No federal funds from a grant made under this program may be used for administrative expenses. To the extent that indirect costs are not administrative in nature, such costs may be allowed provided the grantee has negotiated an approved Indirect Cost Rate Agreement which excludes administrative expenses. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward 10–16 year olds from low-income families.

Attachment A to this announcement is an excerpt from the most recently published Poverty Income guidelines. Annual revisions of these Guidelines are normally published in the Federal Register in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent Guidelines throughout the project period. No other government agency or privately defined poverty guidelines are applicable to the determination of low-income eligibility for this OCS program.

The Federal Register may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

6. Multiple Submittals

An applicant organization should not submit more than one application under this Program Announcement.

Part C—Purpose and Project Requirements

1. Purpose

The Department of Health and Human Services is committed to improving the health and physical fitness of young people, particularly those that are members of low-income families and residents of economically disadvantaged areas of the United States.

The Department seeks to improve the lives of these young people through sports skill instruction, counseling in good health practices, and counseling related to drug and alcohol abuse.

2. Project Requirements

Any instructional activity carried out by an eligible service provider receiving

a grant under this program announcement shall be carried out on the campus of an institution of higher education (as defined in section 1201(a) of the Higher Education Act) and shall include —

a. Access to the facilities and resources of such institution;

b. An initial medical examination and follow-up referral or treatment, without charge, for youth during their participation in such activity;

c. At least one nutritious meal daily, without charge, for participating youth during each day of participation;

d. High quality instruction in a variety of sports (that shall include swimming and that may include dance and any other high quality recreational activity) provided by coaches and teachers from institutions of higher education and from elementary and secondary schools (as defined in sections 1471(8) and 1471(21) of the Elementary and Secondary Education Act of 1965); and

e. Enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and study practices, education for the prevention of drug and alcohol abuse, health and nutrition, career opportunities, and family and job responsibilities.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review described in Part G 5. will be assessed and scored by reviewers. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the criteria set forth below coupled with the specific requirements described in Part D.

Applicants should write their project narrative according to the review criteria using the same sequential order.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

1. Criterion I: Location and Number of Institutions of Higher Education (Maximum: 20 points)

a. Applicant must describe and document the number and location of Institutions of Higher Education committed to participation in this program, with special attention to documenting the accessibility of the schools to economically disadvantaged communities (0–12 points).

b. Applicant must describe in the aggregate the facilities which will be available on the campuses of the institutions to be used in the program (swimming pools, medical facilities, food preparation facilities, etc.) (0–8 points).

2. Criterion II: Adequacy of Work Program (Maximum: 20 Points)

a. Applicant must set forth realistic weekly time targets for the summer program. The time targets should specify the tasks to be accomplished in the given timeframes. (0–8 points).

b. Applicant must address the legislatively-mandated activities found in Part C.2., to include: (1) Project priorities and rationale for selecting them; (2) project goals and objectives; and (3) project activities. (0–12 points)

3. Criterion III: Significant and Beneficial Impact (Maximum: 20 points)

a. Applicant proposes to improve nutritional services to the participating youths (0–5 points).

b. Project incorporates medical examinations along with follow-up referral or treatment (0–5 points).

c. Project includes counseling, related to drug and alcohol abuse, by counselors with experience in those areas as a major element (0–5 points).

d. Project makes use of an existing outreach activity of a community action agency or some other community-based organization (0–5 points).

4. Criterion IV: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 30 points)

a. Organizational experience in program area (0–10 points) Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided significant benefits to low-income youth. Information provided should also address the achievements and competence of the participating institutions.

b. Management history (0–10 points).

Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures. Applicant should also submit a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect any Federal funds which may be awarded under this program.

c. Staffing skills, resources and responsibilities (0–10 points).

Applicant must briefly describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not been identified, the application should contain a comprehensive position description which indicates that the responsibilities assigned to the project director are relevant to the successful implementation of the project.

The application must indicate that the applicant and the subgrantees or delegate institutions have adequate facilities and resources (i.e., space and equipment) to successfully carry out the work plan. The application must clearly show that sufficient time of the project director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

5. Criterion V: Adequacy of Budget (Maximum: 10 points)

Budget is adequate and funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the program. The estimated cost of the project to the government is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

See Application Forms in Attachment B.

1. Contents of Application

Each application package should include one original and two additional copies of the following:

a. A signed Federal Assistance Application (SF–424)

b. A signed Budget Information Non-construction Program (SF–424A)

c. A signed Assurances—Non-construction Programs (SF–424B)

d. A signed Disclosure of Lobbying Activities

e. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that describes the project in the following order:

(i) Eligibility confirmation (Part B).

(ii) Number and location of Institutions of Higher Education committed to the program and their accessibility to youth from economically disadvantaged areas (Part C).

(iii) Organization experience and staff responsibilities (Part D).

(iv) Executive Summary—one page or less (Part D).

(v) Work Program (Part D).

(vi) Appendices, including Bylaws; Articles of Incorporation; proof of non-profit status; resumé of project director; statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect Federal funds; Single Point of Contact comments, if available; certifications regarding Lobbying, Debarment and Drug Free Workplace activities and Environmental Tobacco Smoke.

The total number of pages for the entire application package should not exceed 50 pages. Applications should be two holed punched at the top and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications, or applications enclosed in binder, is especially discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8 1/2 x 11 inch paper only. They should not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They may be discarded, if included.

2. Acknowledgement of Receipt

If an acknowledgement and/or notice is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9365.

Part F—Instructions for Completing Application Package

See Application Forms in Attachment B.

Section A—Indirect Cost Rates

Applicants should enclose a copy of the current rate agreement.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates,* and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Section B—Non-Federal Resources

Mobilized funds from other non-Federal resources should be listed on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution.

Part G—Application Procedures

Section A—See Application Forms in Attachment B

1. Application Submission

The date by which applications must be received is indicated under ''Closing Date'' at the beginning of this announcement.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447, Attention: Application for National Youth Sports Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grant, 901 ''D'' Street, S.W., ACF Mailroom, Second Floor, Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of Date or Time of submission and time of receipt.

2. Late Application and Extension of Deadlines

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails, or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0970–0139.

4. Project Development (Intergovernmental Review)

Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington have elected to participate in the Executive Order process and have established Single Points of Contacts (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of

E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment C of this announcement.

Section B—Information Not Available

1. Availability of Forms

Copies of the Federal Register containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled **CONTACT** at the beginning of this Announcement.

2. Application Submission

For Fiscal Years 1998–2001 the grantee will be notified of the requirements for submission of the continuation application by March of the current fiscal year.

3. Application Consideration

Applications which meet the screening requirements in Section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

4. Criteria for Reviewing Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

a. Initial Screening

(1) The application must contain a completed Standard Form SF–424 signed by an official of the entity applying for the grant who has authority to obligate the organization legally;

(2) a budget (SF–424A); and

(3) Assurances (SF–424B) signed by the appropriate official.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the Section below and the specific requirements contained in Part C of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) Eligibility: Applicant meets the eligibility requirements found in Part A 2.

(2) Target Populations: The application clearly targets the specific outcomes and benefits of the project to low-income participants as defined in the DHHS Poverty Income Guidelines (Attachment A).

(3) Grant Amount: The amount of funds requested does not exceed the estimated amount of $12 million.

(4) Program Focus: The application addresses the geographic scope and project requirements described in Part C of this Announcement.

c. Evaluation Criteria

Applications which pass the initial screening and prerating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part H—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds for use in the project period, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grant, the grantee will be subject to the provisions of 45 CFR Part 74 along with OMB Circulars A–122, A–133, and, for institutions of higher education, A–21.

Grantee will be required to submit progress and financial reports (SF–269).

Grantee is subject to the audit requirements in 45 CFR part 74.

Dated: February 26, 1997.

Donald Sykes,

Director, Office of Community Services.

ATTACHMENT A

Size of family unit	Poverty guide-lines
1996 Poverty Income Guidelines for the 48 Contiguous States and District of Columbia	
1	$7,740
2	10,360
3	12,980
4	15,600
5	18,220
6	20,840
7	23,460
8	26,080
For family units with more than 8 members, add $2,226 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	
1996 Poverty Income Guidelines for Alaska	
1	$9,660
2	12,940
3	16,220
4	19,500
5	22,780
6	26,060
7	29,340
8	32,620
For family units with more than 8 members, add $3,280 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	
1	$9,660
2	12,940
3	16,220
4	19,500
5	22,780
6	26,060
7	29,340
8	32,620
For family units with more than 8 members, add $3,280 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	

BILLING CODE 4184–04–P

Attachment B

Attachment B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b).

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal to sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Link 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers,

or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention' Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 372–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 92–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting new applications or competing continuation applications should respond to Items A and D.
- Applicants submitting noncompeting continuation applications should respond to Item B.
- Applicants requesting supplemental assistance should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate 1) the results of your project and 2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (Include if applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and ''General Information and Instructions'' for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dessemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF 424, SF 424A, SF–424B)

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grant budget, broken down into the object class categories on the 424A, and if category ''other'' is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail

sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, ''federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justication: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identity which construction activity/costs will be contractual and which will assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect costs pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF-424.

Justificaiton: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (self explanatory)

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

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DGMO Form#2 Revised May 1990

BILLING CODE 4184–01–C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' providing by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which is determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to,

check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress; or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only: [redacted]

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment C—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, Fax: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, Fax: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, Fax: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, Fax: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, Fax: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, Fax: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, Fax: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, Fax: (312) 814–1800

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, Fax: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, Fax: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, Fax: (502) 573–2512

Maine

Joyce Benson, State Planning office, State House Station #38, Augusta, Maine 0433, Telephone: (207) 287–3261, Fax: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, Fax: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266, Fax: (313) 961–4869

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, Fax: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, Fax: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, Fax: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, Fax: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, Fax: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, Fax: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, Fax: (614) 466–5400.

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, Fax: (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, Fax: (803) 734–0385

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, Fax: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, Fax: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, Fax: (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, Fax: (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Office of the Governor, State Capital, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–5930, Fax: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambellluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, Fax: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, Fax: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Telephone: (670) 664–2256, Fax: (670) 664–2272

Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, Fax: (670) 644–2272

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, Fax: (809) 776–0069.

[FR Doc. 97–5300 Filed 3–3–97; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96N–0496]

Agency Information Collection Activities: Proposed Collection; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements for manufacturers and distributors of electronic products set forth in the regulations.

DATES: Submit written comments on the collection of information by April 3, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping Requirements for Manufacturers and Distributors of Electronic Products—21 CFR Parts 1002–1010, FDA Forms 2877, 3147, and 766 (OMB Control Number 0910–0025—Reinstatement)

Sections 532 through 542 (21 U.S.C. 360ii through ss) of the Federal Food, Drug, and Cosmetic Act (the act) direct the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program to protect the public from unnecessary radiation from electronic products. Such program shall include the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis, and section 535(e) and (f) of the act direct the Secretary to immediately notify manufacturers of, and assure correction of, radiation defects or noncompliances with performance standards. The authority for records and reports is contained in section 537(b) and (c) of the act.

The regulations implementing these statutory provisions are found in parts 1002 through 1010 (21 CFR parts 1002 through 1010). Section 1002.3 requires manufacturers, when directed by FDA, to provide technical and safety information to users. Section 1002.10(a) through (k) requires manufacturers to submit to FDA product reports containing identification, design, operation and testing, quality control procedures, test results, and product labeling prior to the entry of the product into commerce. Section 1002.11(a) and (b) requires manufacturers to submit supplemental reports to FDA if modifications in product safety or testing of electronic products affect actual or potential radiation emission. Section 1002.12(a) through (e) requires manufacturers to submit abbreviated information on product safety and testing. Section 1002.13(a) through (c) requires manufacturers to report annually to FDA a summary of manufacturer records maintained in accordance with § 1002.30, and provide quarterly updates of models instead of § 1002.10 or § 1002.11 reports. Section 1002.20(a) through (c) requires manufacturers to report to FDA the circumstances, amount of exposure, and

remedial actions taken concerning any accidental radiation occurrence involving their electronic products. If a firm is also required to report the incident under 21 CFR part 803, those regulations take precedence. Section 1002.30(a) and (b) requires manufacturers to keep records on test data and procedures, correspondence regarding radiation safety, and distribution records. Section 1002.31(a) requires manufacturers to maintain records required to be kept under part 1002 for 5 years. Section 1002.31(c) requires manufacturers, when requested by FDA, to provide copies of the distribution records required to be maintained by § 1002.30(b). Section 1002.40(a) through (c) requires dealers and distributors to retain first purchaser information, to be used by manufacturers when a product recall is instituted to ensure the radiation safety of a product. Section 1002.41(a) and (b) specifies that the dealer/distributor records in § 1002.40 may be retained by the dealer or forwarded to the manufacturer for retention and that the manufacturer or dealer shall retain distribution records for 5 years. Section 1002.50(a) specifies criteria by which manufacturers may request exemption from reporting and recordkeeping requirements when there is a low risk of injury, and § 1002.51 specifies criteria by which manufacturers may request exemption from reporting and recordkeeping requirements under certain circumstances if the product is intended for U.S. Government use. The burden is combined with § 1002.50(a), because the processes and procedures are identical.

Section 1003.10(a) and (c) requires manufacturers to notify FDA when their product has a defect or fails to comply with applicable performance standards. Also, under § 1003.10(b) manufacturers must notify purchasers, dealers, and distributors of product defects or noncompliance. Section 1003.11(a)(3) specifies criteria by which manufacturers may refute FDA's notice of defective or noncompliant product, and § 1003.11(b) states that manufacturers, when notified by FDA, must provide information on the number of defective products introduced into commerce. Section 1003.20(a) through (h) specifies information to be provided by manufacturers to FDA when the manufacturer discovers a defect or failure to comply. Section 1003.21(a) through (d) specifies the content and format of the notification by manufacturers to affected persons required by § 1003.10(a). Under § 1003.22(a) and (b), manufacturers must provide to FDA copies of the § 1003.10 disclosure sent to purchasers, dealers or distributors. Section 1003.30(a) and (b) specifies criteria by which manufacturers may request an exemption from the § 1003.10 disclosure and possible product recall and § 1003.31(a) and (b) specifies the content of the § 1003.30 report and the procedure that the agency will follow in reviewing exemption requests. Sections 1004.2(a) through (i), 1004.3(a) through (i), and 1004.4(a) through (h) require manufacturers to report to FDA every plan to remedy a product defect or noncompliance through repair or replacement or refund.

Section 1005.21(a) through (c) specifies criteria for manufacturers or importers to request correction of noncompliant products for importation into the United States, including specific corrections, timeframe, and location for completion. Such requests are made on Form FDA 766, Application for Authorization to Relabel or to perform other action of the Federal Food, Drug, and Cosmetic Act and other related Acts. Section 1005.25(a) and (b) requires importers to report identification information and compliance status of products to FDA. Initial designations are provided in the §§ 1002.10, 1002.11, and 1002.12 reports, so that burden is included in those sections. For each shipment, identification is made on Form FDA 2877. Form FDA 2877, Declaration for Products Subject to Radiation Control Standards, is used to collect this information.

Part 1010 prescribes performance standards for electronic products, under section 534 of the act, to which manufacturers must certify. Section 1010.2(d) specifies criteria for manufacturers to request alternate means of certification to a performance standard. Section 1010.3(a) through (c) requires manufacturers to provide to FDA the coding systems if information on labels is coded and to identify each brand name, and the name and address of the individual or company for whom each product so branded is manufactured. Because firms provide such information in the §§ 1002.10, 1002.11, and 1002.12 reports, the burden is included in those sections. Section 1010.4(b) specifies criteria for manufacturers to petition FDA for a variance from a performance standard. Form FDA 3147, Application for a Variance from 21 CFR 1040.11(c) for Laser Light Shows, is used only by manufacturers of laser products to submit the information. Since the vast majority of variances are submitted by this industry, this form was developed to reduce the burden and timeframe for approvals. Section 1010.5(c) and (d) specifies criteria by which manufacturers or U.S. Government agencies may request an exemption (or amendment or extension) from performance standards when a product is to be used exclusively by a part of the U.S. Government and has adequate radiation emission specifications. Section 1010.13 provides that manufacturers may request alternate test procedures from those specified in a performance standard. The burden is combined with § 1010.5(c) and (d) because the processes and procedures are identical.

The information collections are placed upon manufacturers, importers, assemblers, distributors and dealers of electronic products. Not all of the requirements are placed on all of these groups. The data reported to FDA and the records that are maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. The reports are reviewed by FDA staff to determine product safety and adequacy of quality control testing. Potential and actual problems are resolved with the individual firm. Each firm's quality control staff reviews the test records to maintain production of safe and compliant products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

If FDA did not collect this information, FDA may not have sufficient information to take appropriate actions to protect the public from unnecessary radiation hazards presented by electronic products.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section/Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
1002.3	10	1	10	12	120	$2,940
1002.10, 1010.3	540	1.6	850	24	20,400	$499,800
1002.11	1,000	1.5	1,500	0.5	750	$18,375
1002.12	150	1	150	5	750	$18,375
1002.13 Annual	900	1	900	26	23,400	$573,300
1002.13 Quarterly	250	2.4	600	0.5	300	$7,350
1002.20	40	1	40	2	80	$1,960
1002.50(a), 1002.51	10	1.5	15	1	15	$367.50
Form FDA 2877	600	32	19,200	0.2	3,840	$94,080
1010.2	1	1	1	5	5	$122.50
1010.4 and Form FDA 3147	53	2.1	115	0.5	58	$1,421
1010.4—Other	1	1	1	120	120	$2,940
1010.5, 1010.13	3	1	3	22	66	$1,617
Totals	1,760		23,385		49,904	$1,222,648

There are no capital costs associated with this collection.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
1002.30, 1002.31(a)	1,150	1,655.5	1,903,825	198.7	228,505	$5,598,373
1002.40, 1002.41	2,950	49.2	145,140	2.4	7,080	$173,460
Totals	4,100				235,585	

There are no capital costs associated with this collection.

These burden estimates are based on comments from industry and interviews with industry personnel.

Several requirements are not included in the burden chart because they are exempt under 5 CFR 1320.4. These exempt requirements are: Sections 1002.31(c), 1003.10(a) and (c), 1003.10(b), 1003.11(a)(3), 1003.11(b), 1003.20(a) through (h), 1003.21(a) through (d), 1003.22(a) and (b), 1003.30(a) and (b), 1003.31(a) and (b), 1004.2(a) through (i), 1004.3(a) through (i), 1004.4(a) through (h) and 1005.21(a) through (c). Other requirements are not included because they constitute a disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)).

Dated: February 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5211 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Grantee Reporting Requirements for the Rural Health Network Grant Program; New

The Rural Health Network Grant Program is authorized by Section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996 (Public Law 104–229). The purpose of the program is to assist in the development of vertically integrated networks of health care providers in rural communities. Grantees will be working to change the delivery system in their service areas and will be using the federal funds to develop network capabilities.

Grantees will be asked to submit semiannual reports which provide information on progress towards goals and objectives of the network, progress toward developing the governance and organizational arrangements for the network, specific network activities, certain financial data related to the grant budget, and health care services provided by the network.

The information will be used to evaluate progress on the grants, to understand barriers to network development in rural areas, to identify grantees in need of technical assistance, and to identify best practices in the development of provider networks in rural communities. The information will

also be used to begin to evaluate the impact of networks on access to care.

To minimize the burden on grantees, the reports will be submitted electronically. The estimated burden is as follows:

Type of respondent	Number of respondents	Responses per respondent	Burden per response	Total burden (hours)
Grantees	40	.2	20	1,600

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 26, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–5209 Filed 3–3–97; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1997 Funding Opportunities for Knowledge Development and Application Cooperative Agreements

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 1997 funds for Knowledge Development and Application cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (million)	Estimated number of awards	Project period (years)
State Incentive Program	05/12/97	$15.0	5	3
Centers for the Application of Prevention Technologies (CAPT)	05/12/97	5.0	5	3
Workplace Managed Care	05/12/97	4.0	10–15	3

Note: SAMHSA published notices of available funding opportunities in FY 1997 in the Federal Register (Vol. 62, No. 16) on Friday, January 24, 1997; (Vol. 62, No. 27) on Monday, February 10, 1997; and (Vol. 62, No. 31) on Friday, February 14, 1997.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1997 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 104–208. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the Federal Register (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

GENERAL INSTRUCTIONS: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov). Click on SAMHSA Funding Opportunities for instructions. You can also click on the address of the forms distribution Web Page for direct access.

The full text of each of the activities (i.e., the GFA) described in Section 4 is available electronically via the following:

SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov) and SAMHSA's Bulletin Board (800–424–2294 or 301–443–0040).

APPLICATION SUBMISSION: Applications must be submitted to: SAMHSA Programs, Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817)

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Cooperative Agreements/ Amounts.
- Catalog of Federal Domestic Assistance Number.
- Contacts.
- Application Kits.

Table of Contents

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA is moving assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

The agency has transformed its demonstration grant programs from service-delivery projects to knowledge acquisition and application. For FY 1997, SAMHSA has developed an agenda of new programs designed to answer specific important policy-relevant questions. These questions, specified in this and subsequent Notices of Funding Availability, are designed to provide critical information to improve the Nation's mental health and substance abuse treatment and prevention services.

The agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1997 programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

2. Special Concerns

SAMHSA's FY 1997 Knowledge Development and Application activities discussed below do not provide funds for mental health and substance abuse treatment and prevention services except for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects will be considered nonresponsive. Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/ SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the Federal Register on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1997 Substance Abuse Activities

4.1 Cooperative Agreements

Three major activities for SAMHSA cooperative agreement programs are discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.1.1 National Youth Substance Abuse Prevention Initiative—State Incentive Cooperative Agreements for Community-Based Action (State Incentive Program)

- Application Deadline: May 12, 1997
- Purpose: To reverse the trend in drug use by youth, the State Incentive Cooperative Agreements for Community-Based Action will call upon Governors to set a new course of action that will assess needs, identify gaps and channel or redirect resources (consistent with the requirements of the funding source) to implement comprehensive strategies for effective youth substance abuse prevention. This program gives States the opportunity to develop an innovative process for using these special incentive funds in a different way so as to complement and enhance existing prevention efforts. Through this State-led process, individual citizens can be encouraged to play a more forceful role in their community's anti-drug efforts; and additional resources can be mobilized to support promising prevention approaches across systems and settings.

The State Incentive Program will support the States in coordinating and redirecting all prevention resources available within the State and in developing a revitalized, comprehensive prevention strategy that will make optimal use of those resources. With these redirected resources and a viable prevention strategy in place, Governors can more effectively mobilize local citizens—youth, families, communities, schools and workplaces—to work proactively with State and local prevention organizations.

Therefore, the State Incentive Program has a two-fold purpose:

(1) Governors should coordinate, leverage and/or redirect, as appropriate, and legally permissible, all substance abuse prevention resources (funding streams and programs) within the State that are directed at communities, families, schools and workplaces in order to fill gaps with effective and promising prevention approaches targeted to marijuana and other drug use by youth. Any redirection of Federal funds, however, must be consistent with the terms and conditions of such funding and all other Federal laws.1

(2) States should develop a revitalized, comprehensive State-wide strategy aimed at reducing drug use by youth through the implementation of promising community-based prevention efforts derived from sound scientific research findings.

- Priorities: None.
- Eligible Applicants: Eligibility is limited to the Office of the Governor so that a consistent State-wide strategy on substance abuse prevention will be implemented by the Governor and evaluated as to effectiveness in the strategies used. Eligibility is limited to the Office of the Governor in those States (including the District of Columbia) and territories and the Indian Tribal organization (i.e., the Red Lake Band of Chippewa) that receive the Substance Abuse Prevention and Treatment Block Grant, Title XIX, Part B, Subpart II of the Public Health Service Act, 42 U.S.C. 300x–21, et seq. (hereinafter referred to as ''States''). That grant sets aside 20 percent of the funds for primary prevention activities. This set-aside is a large resource available to the State for prevention activities and, along with the resources available under this announcement and other resources available to the State for substance abuse prevention activities, could assist the Governor in implementing a State-wide strategy.

By awarding cooperative agreement funds directly to the Governor's Office, SAMHSA/CSAP will best facilitate the optimal conditions and incentives needed to establish the State Incentive Program. The Governor's leadership and commitment to youth substance abuse prevention, along with the infrastructure developed through the substance abuse Block Grant funds can spur the support of organizations throughout the State and ensure that substance abuse prevention aimed at youth remains a high-priority, comprehensive, and systemically integrated effort.

For this State Incentive Program, SAMHSA/CSAP strongly supports using the prevention expertise and resources that have historically resided in the Alcohol and Drug Single State Agency (SSA), which continues to fund prevention strategies through the Substance Abuse Prevention and Treatment Block Grant. Therefore, SAMHSA/CSAP encourages Governors to include a significant role for the SSA in the development, planning and implementation of State efforts under this cooperative agreement. For example, the SSA director or his/her designee could serve as the project director for the cooperative agreement and would thus serve in a key leadership and oversight capacity.

- Cooperative Agreements/Amounts: It is estimated that approximately $15 million will be available to support approximately five (5) awards under this cooperative agreement announcement in FY 1997. Actual funding levels will depend upon the availability of funds.
- Catalog of Federal Domestic Assistance Number: 93.230.
- Program Contact: For programmatic or technical assistance, contact: Dave Robbins or Dan Fletcher, DSCSD, Systems Applications Branch, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II Building, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9438.
- Grants Management Contact: For business management assistance, contact: Mary Lou Dent, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Room 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5702.
- Application Kits: Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, 1–800–729–6686; 1–800–487–4889 TDD, Via Internet: www.health.org (Go into the Forum Section of the Web site, click on ''CSAP FY 97 Grant Opportunities.'')

Visually impaired: Disk versions of the application may be requested.

4.1.2 CSAP Cooperative Agreements for Centers for the Application of Prevention Technologies (CAPT)

- *Application Deadline:* May 12, 1997.
- *Purpose:* Cooperative agreements will be awarded to develop and operate five regional Centers for the Application of Prevention Technologies (CAPT). The

purpose of this program is to assist States to apply on a consistent basis, the latest research knowledge to their substance abuse prevention programs, practices, and policies. The regions served by the CAPT program will be the same as those of the National Prevention Network (a membership organization of State prevention coordinators).

The CAPT program goal is to use conventional and electronic delivery methods to assist recipients of State Incentive Cooperative Agreements for Community-Based Action, their subrecipients, and other States in applying and utilizing scientifically defensible substance abuse prevention knowledge and technology. The CAPT program will bridge the gap between dissemination of prevention knowledge and effective application of that knowledge in the field.

The CAPT program will focus its efforts on four key prevention topic areas. These topic areas include: youth illicit drug use (with an emphasis on marijuana); underage drinking; alcohol, drugs, and violence; and HIV/AIDS and drug use. Applicants may be required to provide services on other topic areas as well. Applicants must also demonstrate a thorough knowledge and ability to provide technical assistance and skills development in the following six CSAP prevention strategies: information dissemination, education, community mobilization, alternatives, environmental change, and early identification and referral.

- *Priorities:* None.
- *Eligible Applicants:* Applications may be submitted by organizations such as units of State or local government and by domestic private nonprofit or for-profit organizations such as community-based organizations, universities, colleges, and hospitals.
- *Cooperative Agreements/Amounts:* It is estimated that approximately $5 million will be available to support approximately 5 awards under this program in FY 1997. Actual funding levels will depend upon the availability of funds.
- *Catalog of Federal Domestic Assistance Number:* 93.230.
- *Program Contact:* For programmatic or technical assistance contact: Ms. Luisa del Carmen Pollard, M.A., Division of Community Education Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–0377.

Note: The Division of Community Education (DCE) , CSAP, will accept concept papers (not to exceed 4 pages) from prospective applicants via FAX or the Internet. DCE staff will review them and provide technical assistance by Internet, FAX, or phone. Concept papers may be submitted anytime up to 20 days prior to the application receipt date. Concept paper should be faxed or e-mailed to: CAPT at (301) 443–5592 or via the Internet: www.health.org (Go into the Forum section of the web site, click on ''CSAP Grant Opportunities for FY97.'') Whether or not a concept paper is submitted will have no bearing on the subsequent acceptance and review of an application.

- *Grants Management Contact:* For business management assistance, contact: Mary Lou Dent, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 6405600 Fishers Lane, Rockville, MD 20857.
- *Application Kits:* Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, 1–800/729–6686, 1–800/487–4889 TDD, Via Internet: www.health.org (Go into the Forum Section of the Web site, click on ''CSAP FY97 Grant Opportunities')

The full text of the GFA is also available electronically via the CSAP site at the NCADI (www.health.org).

4.1.3 Cooperative Agreements for Public/Private Sector Workplace Models and Strategies for the Incorporation of Substance Abuse Prevention and Early Intervention Into Managed Care (Short Title: Workplace Managed Care)

- *Application Deadline:* May 12, 1997
- Purpose: SAMHSA/CSAP is seeking to build a strategic cooperative effort with those who are engaged in, have a binding agreement with or documented access to, an operational, fully funded, public/private sector workplace managed care (WMC) substance abuse prevention and early intervention program. Those with access to these WMC programs must also have documented, authorized access to the data related to the program. If data are available, grantees will analyze retrospective data to assess longitudinal effectiveness. All grantees will collect, analyze and compare prospective data for a study group and at least one selected comparison group. Programs will evaluate their operational processes and outcomes, be part of a cross-site evaluation study and will develop a replication manual.

The fully funded, public/private sector workplace managed care substance abuse prevention and early intervention program must already be in place for a minimum of 1 year and fully implemented for employees, if not all covered lives. The workplace must have a documented minimum of 250 employees at selected workplace study sites. This cooperative agreement program will assist SAMHSA/CSAP to identify effective components and strategies of these programs which serve to prevent and reduce substance abuse and enhance overall wellness of individual employees and their families. This information will promote the development of models and materials and the dissemination first to businesses and eventually to communities and States as they initiate new programs where none exist and assist those that do exist to improve their effectiveness.

The overall goal of this cooperative agreement program is to determine which public/private sector workplace managed care substance abuse prevention and early intervention programs are the most effective in reducing the incidence and prevalence of substance abuse and to disseminate these findings.

The two objectives in support of this goal are to:

1. Determine the nature (e.g., structure, organization, function, etc.) of WMC programs utilizing substance abuse prevention and early intervention efforts.

2. Provide a detailed description of the WMC programs; assess their strengths and weaknesses and their impact on the substance abuse of employees and their families (e.g., covered lives); and assess the quality and delivery of substance abuse prevention and early intervention.

Through funding this program, SAMHSA/CSAP anticipates gaining knowledge about the following global questions.

- Do substance abuse prevention and early intervention strategies and programs, applied within various managed care models prevent and reduce substance abuse for covered lives (employees and their families) over time?
- Does the prevalence and incidence of substance abuse differ among substance abuse prevention and early intervention models of managed care?
- Does the prevalence/incidence of substance abuse differ among substance abuse prevention and early intervention models within specific managed care and non-managed care models?
- What issues or policies related to gender, cultural, ethnic, age, race, educational, legal and/or linguistic variations need to be addressed to increase positive impacts of the program?
- *Priorities:* None
- Eligible Applicants: Applications may be submitted by domestic private

nonprofit and for-profit organizations such as businesses, Employee Assistance Programs (EAPs), health care service organizations, research institutes, universities, colleges, and hospitals, and by organizations, such as units of State or local government.

Substance abuse prevention and early intervention programs may be co-located with other managed care services or may be organizationally or geographically separate. If separate, linkages must be clearly described.

- Cooperative Agreements/Amounts: It is estimated that approximately $4 million will be available to support approximately 10–15 awards under this GFA in FY 97. It is anticipated that the average award will be in the $275,000 to $500,000 range. Actual funding levels will depend upon the availability of funds.
- Catalog of Federal Domestic Assistance Number: 93.230
- Program Contact: For programmatic or technical assistance, contact: Deborah M. Galvin, Ph.D., Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Parklawn, Room 13A–54,5600 Fishers Lane, Rockville, MD 20857, (301) 443–6780.
- Grants Management Contact: For business management assistance, contact: Mary Lou Dent, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Room 640, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–5702.
- Application Kits: Application kits are available from: National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, MD 20847–2345, 1–800–729–6686; 1–800–487–4889 TDD, Via Internet: www.health.org (go into Forum Section of the web site, click on ''CSAP FY 97 Grant Opportunities')

Visually impaired: Disk versions of the application may be requested.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1997 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Specific application guidance materials may include more detailed guidance as to how a Center will implement SAMHSA's policy on promoting the non-use of tobacco.

7. Executive Order 12372

Applications submitted in response to all FY 1997 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 1997.

Richard Kopanda,

Executive Officer, SAMHSA

[FR Doc. 97–5236 Filed 3–3–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with the Electric Power Research Institute (EPRI) to generate reliable, accurate, and accessible quality information on major U.S. coal beds that will be mined during the next 20–30 years.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Dr. Robert B. Finkelman of the U.S. Geological Survey, Energy Resource Surveys Program, Mail Stop 956, Reston, Virginia 20192; telephone (703) 648–6412; fax (703) 648–6419; e-mail <rbf@usgs.gov>.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: February 21, 1997.

P. Patrick Leahy,

Chief, Geologic Division.

[FR Doc. 97–5224 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Notice of Inventory Completion for Native American Human Remains From Kitsap County, WA, in the Possession of the Department of Anthropology, Central Washington University, Ellensburg, WA, and Associated Funerary Objects from Kitsap County, WA in the Possession of The Burke Museum, University of Washington, Seattle, WA

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of Native American human remains from Kitsap County, WA, in the possession of the Department of Anthropology, Central Washington University, Ellensburg, WA; and associated funerary objects from Kitsap County, WA in the possession of The Burke Museum, University of Washington, Seattle, WA.

A detailed assessment of the human remains was made by Central Washington University Department of Anthropology professional staff and of the associated funerary object by the Burke Museum professional staff. Both of these assessments were made in consultation with representatives of the Skokomish Indian Tribe.

In 1925, human remains representing one individual were recovered near Holly, Kitsap County, WA by Mr. Albert Pfundt on his property. In 1974, these human remains were transferred from the Burke Museum to the Department of Anthropology, Central Washington University. No known individuals were identified. The thirteen associated funerary objects include antler wedges and fragments, bone points, a harpoon valve, a harpoon point. These associated funerary objects were donated to the Burke Museum in 1942 by Mr. Albert Pfundt. According to the Burke Museum's accession ledger, all these objects were found with the human remains under the stump of a tree estimated to be 300–400 years old.

Anthropological evidence indicates continuous 2,000 year occupation of this part of Kitsap County, WA into the historic period, based on oral history and continuity of technology. Consultation evidence presented by representative of the Skokomish Indian Tribe indicate the Skokomish have occupied this area throughout this period.

Based on the above mentioned information, Central Washington University officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. The Burke Museum officials have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the thirteen objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, Central Washington University officials and The Burke Museum officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Skokomish Indian Tribe.

This notice has been sent to officials of the Skokomish Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Steven Hackenberger, Chair, Department of Anthropology, Central Washington University, 400 E. 8th Ave., Ellensburg, WA 98926–7544; telephone: (509) 963–3201, fax (509) 963–3215; or Dr. James Nason, Chair of the repatriation committee, Burke Museum, Box 353010, University of Washington, Seattle, WA 98195, telephone (206) 543–9680 before April 3, 1997. Repatriation of the human remains and associated funerary objects to the Skokomish Indian Tribe may begin after that date if no additional claimants come forward.

Dated: February 26, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5213 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items in the Possession of the Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ, which meet the definition of ''sacred object'' under Section 2 of the Act.

The cultural items are two Hopi spirit friends or katsina masks worn in Katsina dances. The spirit friends are known as Niman and Heheya.

In 1929, the spirit friend Niman was donated to the Arizona State Museum by an anonymous donor. The museum's accession information states this spirit friend was collected from the Hopi Pueblos. In 1964, the spirit friend Heheya was donated to the Arizona State Museum by the Arizona Pioneers Historical Society. The cultural affiliation of these cultural items is clearly Hopi as documented in museum records and verified by the Katsinmomngwit (traditional religious leaders) of the Hopi Tribe. During consultation, the Katsinmomngwit and representatives of the Hopi Tribe identified these two katsina masks as specific ceremonial objects which are needed by traditional religious leaders for the practice of the Hopi religion by present-day adherents.

Based on the above-mentioned information, officials of the Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these two cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Arizona State Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these cultural items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe and the Pueblo of Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Nancy Odegaard, Acting Curator of Collections, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621–6314 before April 3, 1997. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 97–5215 Filed 3–3–97; 8:45 am]

BILLING CODE BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items from Nebraska and South Dakota in the Possession of the Fruitlands Museums, Harvard, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Fruitlands Museums, Harvard, MA, which meet the definitions of ''unassociated funerary object,'' ''sacred object'' and ''object of cultural patrimony'' under Section 2 of the Act.

The objects include seven strands of beads, eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield.

The seven strands of beads are made up of various combinations of shell disks, bone tubes, and catlinite and glass beads. The seven strands of beads were purchased by the museum from Henry T. Neuman between 1927 and 1932. Neuman labeled the strands of beads as ''Sioux-Nebraska.'' Museum staff identify the seven strands of beads as Santee Sioux and the representatives from Cheyenne River Sioux tribe agree.

The eleven pipes are represented by ten ''L'' and ''T'' shaped catlinite pipe bowls and nine wooden stems. Nine of these pipes were purchased by the museum from Henry T. Neuman between 1927 and 1932. Neuman labeled the nine pipes as ''Sioux-Nebraska.'' Museum staff identify the nine pipes acquired from Neuman as Santee Sioux and the representatives from Cheyenne River Sioux tribe agree. No collection information is available for the other two pipes, but stylistic analysis confirms their identification as being of Lakota origin.

The six pipe bags are made of leather and decorated with glass beads and porcupine quill work. Museum records indicate that Henry T. Neuman sold Sioux bags and tobacco bags, however, the records are too vague to identify exactly those specific bags. Although no definitive collection information is available, stylistic analysis confirms the identification of these six pipe bags as being of Lakota origin.

The two pipe tampers consist of carved wooden sticks. One of the tampers has a horse head carved on one end and is decorated with beads and tin cones on the other. The two pipe tampers were purchased by the museum from Henry T. Neuman between 1927 and 1932. Neuman labeled the pipe tampers as ''Sioux-Nebraska.'' Museum staff identify the pipe tampers as Santee Sioux and the representatives from Cheyenne River Sioux tribe agree.

The four rattles are made of wood and rawhide. Collection information indicates these rattles were sold to the museum by Henry T. Neuman between 1928–1929. Stylistic analysis confirms their identification as being of Lakota origin.

The two whistles consist of an eagle humerus with proximal and anterior ends cut off. One whistle bares a red paint design. The other whistle has a mescal bean and a pink feather attached. In 1929, the latter whistle was purchased by the museum from Henry T. Neuman, who labeled that whistle as ''Sioux.'' No collection information is available for the other whistle, but stylistic analysis confirms its identification as being of Lakota origin.

The shield consists of rawhide webbing decorated with golden eagle feathers, locks of horse hair, rings of gray fur, five clusters of smaller feathers, and two wooden piercing implements. This shield was sold to the museum in 1933 as a ''ceremonial shield'' by the Plume Trading Company. Records indicate representatives of the Rosebud Sioux Tribe approached the museum to claim the shield in 1989. Stylistic analysis of the webbed shield confirms its identification as being of Lakota origin.

Pteincila cannumpa awayanka Arvol Looking Horse has identified the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield as specific ceremonial objects needed by traditional Lakota religious leaders for the practice of traditional Lakota religion by present-day adherents. A traditional religious leader from the Cheyenne River Sioux Tribe states that the eleven pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield spoke to him and asked to be brought back to the Lakota Nation. The representative of the Cheyenne River Sioux Tribe states that the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield were not and are not considered ''personal property'' but belong to the Lakota People as a whole. The Lakota People currently comprise the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, and Oglala Sioux Tribe.

Officials of the Fruitlands Museum believe that the Massachusetts Uniform Commercial Code gives the museum good title to all objects in its collection if they were obtained through good faith purchases, and that all of the above-mentioned items were obtained through good faith purchases. However, museum officials also believe that the spirit of the Native American Graves Protection and Repatriation Act takes precedence over concerns for title. Further, it is the opinion of officials of the Fruitlands Museum that many of these items could have been made for sale, however, their purchase from Henry T. Neuman, a known grave robber and pot hunter, make the circumstances of collection more likely to have been from cultural contexts.

Based on the above-mentioned information, officials of the Fruitlands Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the seven strands of beads are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Fruitlands Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(C), the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Further, officials of the Fruitlands Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the eleven pipestone pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield have ongoing historical, traditional, or cultural importance central to the Lakota People as a whole and could not have been alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the tribe.

Lastly, officials of the Fruitlands Museums have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the seven strands of beads, nine pipestone pipes, two pipe tampers, and one eagle bone whistle and the Santee Sioux Tribe. Officials of the Fruitlands Museums have also determined that there is a relationship of shared group identify which can be reasonably traced between two pipestone pipes, six pipe bags, four rattles, one eagle bone whistles, and one webbed shield and the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, and the Oglala Sioux Tribe.

This notice has been sent to officials of the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe, Standing Rock Sioux Tribe, and Oglala Sioux Tribe. Any lineal descendant or Indian tribe that believes itself to be culturally affiliated with these human remains should contact Michael A. Volmar, Curator, Fruitlands Museum, Harvard, MA 01451, phone: (508) 456–3924, before April 3, 1997.

Repatriation of the seven strands of beads, nine pipestone pipes, two pipe tampers, and one eagle bone whistle to the Santee Sioux Tribe may begin after that date if no additional claimants come forward. Repatriation of the two pipestone pipes, six pipe bags, four rattles, one eagle bone whistles, and one webbed shield to the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, and Oglala Sioux Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: February 26, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5212 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains From Mummy Island Cave, AK, in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains in the possession of the University of Alaska Museum, Fairbanks, AK.

A detailed assessment of the human remains was made by University of Alaska Museum professional staff in consultation with representatives of the Chugach Heritage Foundation on behalf of the Native Village of Eyak.

In 1964, human remains representing one individual were recovered from a cave on Mummy Island located at the mouth of Orca Inlet near Cordova, AK. There is no further information in the museum's records regarding the collection of this individual. The human remains were donated by Bobby Benson and given to Dr. Ivar Skarland of the Anthropology Department at the University of Alaska, Fairbanks. No known individual was identified. No associated funerary objects are present.

Historical documents and archeological evidence indicate the caves on Mummy Island are traditional burial areas of the Native Village of Eyak based on manner of internment and associated funerary objects. Oral tradition presented by the representatives of the Chugach Heritage Foundation also states Mummy Island is a traditional burial area.

Based on the above mentioned information, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Alaska Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Chugach Heritage Foundation on behalf of the Native Village of Eyak.

This notice has been sent to officials of the Chugach Heritage Foundation and the Native Village of Eyak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200; telephone: (907) 474–6117, before April 3, 1997. Repatriation of the human remains to the Chugach Heritage Foundation on behalf of the Native Village of Eyak may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5214 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains From the Area of Teller, AK, in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from the area of Teller, AK, in the possession of University of Alaska Museum, Fairbanks, AK.

A detailed assessment of the human remains was made by University of Alaska Museum professional staff in consultation with representatives of the Native Village of Teller and the Bering Straits Foundation.

At an unknown date, human remains representing three individuals were recovered from unknown sites in the Teller, AK area by unknown individual(s). The human remains were donated to the Anthropology Department at the University of Alaska, Fairbanks, and accessioned by the University Museum in 1993. No known individuals were identified. No associated funerary objects are present.

Archeological and ethnographic evidence indicates the general region of Teller, AK, shows a continuity of cultural occupation from around 900 A.D. to the present. Oral history presented by representatives of the Native Village of Teller supports this cultural continuity between this region and the present-day Native Village of Teller. Oral history evidence provided by Teller elders says that this area was used for Teller burials.

Based on the above mentioned information, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the University of Alaska Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Teller.

This notice has been sent to officials of the Native Village of Teller and the Bering Straits Foundation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200; telephone: (907) 474–6117, before April 3, 1997. Repatriation of the human remains to the Native Village of Teller may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5216 Filed 3–3–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Civil Rights Division

Office of Special Counsel for Immigration Related Unfair Employment Practices; Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair

Employment practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration-related employment discrimination. Grants will range in size from $50,000 to $150,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate employers about the antidiscrimination provisions of INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, trade associations, industry groups, professional organizations, or other nonprofit entities providing information services to potential victims of discrimination and/or employers.

APPLICATION DUE DATE: May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers and/or members of the protected class, or to those who can fill a particular need not currently being met.

Background

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 8 U.S.C. 1324b, *et seq.*, which amended the INA. Additional provisions were signed into law by President Bush in the Immigration Act (IMMACT 90) on November 29, 1990. IRCA and subsequently, IMMACT 90, makes hiring aliens without work authorization unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

During the debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals simply because they looked or sounded foreign. Consequently, Congress enacted Section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits employers of four or more employees from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee, and prohibits employers from engaging in document abuse in the employment eligibility verification process.

Citizens and certain classes of work authorized individuals are protected from citizenship status discrimination. Protected non-citizens include permanent residents, temporary residents under the 1986 amnesty, the Special Agricultural Workers (SAWs) or the Replenishment Agricultural Workers (RAWs) programs, and refugees and asylees who apply for naturalization within six months of being eligible to do so. Citizens and all work authorized individuals are protected from discrimination on the basis of national origin. However, this prohibition applies only to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

In addition, under the document abuse provision of the law, employers must accept all forms of work authorization and proof of identity allowed by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. Requiring more or specific documents to prove identity and work authorization may constitute document abuse.

On October 1, 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA will expand the existing electronic employment eligibility pilot programs being carried out by the INS, and will reduce the number of documents that employers can accept to verify an individual's work eligibility. These changes are expected to take place October 1, 1997.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with a specially designated administrative tribunal. OSC also initiates independent investigations of possible Section 102 violations.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provisions. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both potential victims of discrimination about their rights and employers about their responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (*e.g.*, brochures, posters, booklets, information packets, and videos) to educate these groups, OSC has determined that the focus of the program should be on the actual delivery of these materials to educate further both potential victims and employers. More specifically, in keeping with the purpose of the grant program, OSC seeks proposals that will use *existing materials* effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions.

Program Description

The program is designed to develop and implement cost effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. Applications may propose to educate potential victims only, employers only, or both in a single campaign. Program budgets must include the travel, lodging

and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should be directed to (1) work authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or to (3) employers. The proposals should define the characteristics of the work authorized population or the employer group(s) targeted for the educational campaign, and the applicant's qualifications to reach credibly and effectively large segments of the campaign targets.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible targeted audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Some grantees who are implementing citizenship campaigns, have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals in the targeted population. If an applicant proposes to combine these efforts, please discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, proposals should include in their budgets the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC to ensure legal accuracy and proper emphasis prior to production. It should be noted that proposed revisions/translations of OSC approved materials must also be submitted for clearance. All information distributed should also include mention of the OSC as a source of assistance, information and action, and the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired).

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

Proposals will be submitted to a peer review panel. OSC anticipates seeking assistance from sources with specialized knowledge in the areas of employment and immigration law, as well as in evaluating proposals, including the agencies that are members of the Antidiscrimination Outreach Task Force: the Department of Labor, the Equal Employment Opportunity Commission, the Small Business Administration, and the Immigration and Naturalization Service. Each panelist will evaluate proposals for effectiveness and efficiency with emphasis on the various factors enumerated below. The panel's results are advisory in nature and not binding on the Special Counsel. Letters of support, endorsement, or recommendation will not be accepted or considered.

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 points)

Sound program design and cost-effective strategies for educating the targeted population are imperative.

Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (15 points)

b. Selection and definition of the target group(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the target. (10 points)

c. A cost effective campaign strategy for educating targeted employers and/or members of the protected class, with a justification for the choice of strategy. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided.

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of sub-contractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project. (10 points)

3. Staff Capability (10 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to nonprofit organizations that serve potential victims of discrimination and/or employers.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $50,000 to $150,000.

During evaluation, the panel will closely examine those proposals that guarantee maximum exposure and penetration in the employer or potential victims target populations. All things being equal, a campaign designed to reach a very large number of employers (or potential victims) in the state of Texas might score higher than a campaign designed to reach a more limited number of employers (or potential victims) nationwide.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 1997.

Application Deadline

All applications must be received by 6:00 p.m. EDT, May 5, 1997, at the Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Applications submitted via facsimile machine will not be accepted or considered.

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. A Standard Form LLL (Disclosure Form to Report Lobbying).

4. An abstract of the full proposal, not to exceed one page.

5. A program narrative of not more than fifteen (15) double-spaced typed pages which include the following:

a. A clear statement describing the approach and strategy to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. The proposed staffing plan (NOTE: If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time); and

d. Description of how the project will be evaluated.

6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget.

Note: Program budgets must include the travel, lodging and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn).

7. OJP Form 7120/1 (Accounting System and Financial Capability Questionnaire).

8. Copies of resumes for the professional staff proposed in the budget.

9. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Tel (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

Dated: February 27, 1997.

James S. Angus,

Acting Special Counsel, Office of Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 97–5304 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 C.F.R. § 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that on February 12, 1997, a Consent Decree was lodged in *United States* v. *James Maxwell, et al.*, Civil Action No. 97–WY–286–AJ with the United States District Court for the District of Colorado.

The Complaint in this case was filed under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, with respect to Clear Creek Superfund Site located in Gilpin and Clear Creek Counties, Colorado against James Maxwell, Argo Town, U.S.A., Inc., and Argo Tunnel Recovery Co. Pursuant to the terms of the Consent Decree, which resolves claims under the above-mentioned statute and under Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, the settling defendants will provide the United States with property upon which a wastewater treatment facility will be built.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *James Maxwell, et al.*, DOJ Ref. No. 90–11–3–1553. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Colorado, 1961 Stout Street, Suite 1100, Denver, Colorado. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region VIII, 999 18th Street,

Suite 500, Denver, Colorado, 80202. When requesting a copy by mail, please enclose a check in the amount of $12.25 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 97–5247 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

United States v. Delta Dental of Rhode Island; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, a Stipulation, and a Competitive Impact Statement have been filed with the United States District Court for the District of Rhode Island in *United States of America* v. *Delta Dental of Rhode Island,* Civil Action No. 96–113P.

The Complaint in the case alleges that Delta Dental of Rhode Island (''Delta'') entered into so-called ''most favored nation'' agreements with its panel dentists in unreasonable restraint of trade, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Delta, a broad-panel plan contracting with over 90% of Rhode Island's dentists, required that participating dentists offer no lower price to competing dental plans. The agreements effectively restricted the willingness of panel dentists to discount fees for dental care and blocked competition from narrow-panel, lower cost dental plans.

The proposed Final Judgment eliminates Delta's most favored nation clause and enjoins Delta from engaging in other actions that would limit future discounting by its participating dentists.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Gail Kursh, Chief; Health Care Task Force; United States Department of Justice; Antitrust Division; Liberty Place; 325 7th Street, NW., Room 404, Washington, DC 20530 (202/307–5799).

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division, United States Department of Justice.

United States District Court for the District of Rhode Island

[Civil Action No. 96–113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Stipulation

It is stipulated by and between the undersigned parties, their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over both of the parties, and venue of this action is proper in the District of Rhode Island.

2. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own action, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant any by filing that notice with the Court.

3. If Plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to either party in this or in any other proceeding.

4. Defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court.

Dated: _____.

For Plaintiff

Joel I. Klein,
Acting Assistant Attorney General.

A. Douglas Melamed,
Deputy Assistant Attorney General.

Rebecca P. Dick,
Deputy Director, Office of Operations.

Gail Kursh,
Chief, Health Care Task Force.

David C. Jordan,
Assistant Chief, Health Care Task Force, Antitrust Division, Department of Justice, Washington, D.C. 20530.

For Defendant

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Sheldon Whitehouse,
United States Attorney, District of Rhode Island.

By: Anthony DiGioia,
Ass't. U.S. Attorney, 10 Dorrance Street, Providence, R.I. 02903, (401) 528–5477.

William G. Kopit,
Espstein Becker & Green, 1227 25th Street, N.W., Washington, D.C. 20037, (202) 861–9000.

United States District Court for the District of Rhode Island

[Civil Action No. 96–113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Final Judgment

Plaintiff, United States of America, filed its Complaint on February 29, 1996. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party of any issue of fact or law, nor a determination that any violation of law has occurred. Therefore, before the taking of any trial testimony and without trial of any issue of fact or law, and upon consent of the parties, it is

Ordered, adjudged, and decreed, as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the consenting parties. The Complaint states a claim upon which relief may be granted against Delta under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used herein, the term:

(A) ''Defendant'' or ''Delta'' means Delta Dental of Rhode Island.

(B) ''Participating Dentist's Agreement'' means Delta's agreement with dentists for the provision of dental services to Delta's subscribers, including Delta's Rules and Regulations referenced in the agreement, and all amendments and additions to any such agreement.

(C) ''Participating Dentist'' means any dentist who has agreed to comply with the terms of the Participating Dentist's Agreement.

(D) ''Most Favored Nation Clause'' means:

(1) paragraph 10 of Delta's Rules and Regulations, sometimes characterized as Delta's ''Prudent Buyer Policy,'' pursuant to which:

''Delta Dental reserves the right to limit reimbursements to dentists to such levels as such dentists have agreed to accept as reimbursement from other non-governmental dental benefits reimbursement programs;'' or

(2) any contractual provision, policy, or practice which requires a dentist to charge Delta no more than the lowest fee charged by that dentist to any non-Delta plan or patient.

(E) ''Usual and customary fees'' means the fees for services and material that dentists usually charge, before any discounting, to their patients.

III. Applicability

This Final Judgment applies to Delta and to its successors and assigns, and to all other persons (including Participating Dentists) in active concert or participation with any of them, who have received actual notice of the Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Delta is enjoined and restrained from:

(A) maintaining, adopting, or enforcing any Most Favored Nation Clause or similar provision in any Participating Dentist's Agreement, or by any other means or methods;

(B) maintaining, adopting, or enforcing any policy or practice varying Delta's payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentist charges Delta;

(C) taking any action to discourage any dentist from participating in any non-Delta plan or from offering or charging to any non-Delta patient, or any non-Delta plan, any fee lower than that paid to the dentist by Delta; and

(D) monitoring, auditing, or obtaining from any dentist the fees a particular dentist charges any non-Delta patient or any non-Delta plan, except as provided in Section V.

V. Permitted Activities

Nothing herein shall be construed so as to preclude Delta from:

(A) establishing preferred provider networks or other forms of limited panels of providers, including discounted fee panels, recruiting dentists who are participating with other dental plans in similar panels, and negotiating bi-lateral fee arrangement with such dentists, provided that such activity does not violate any provision of Section IV;

(B) establishing provider reimbursement levels as may be reasonable and necessary to respond to market conditions and having different reimbursement levels for different categories or panels of providers, provided that Delta's criteria for differentiation in reimbursement among categories or panels of dentists are not based on their participation in other dental plans, on fees those dentists offer other dental plans or persons, or on fees those dentists agree upon with other dental plans or persons; and

(C) collecting through otherwise lawful means, including use of a survey sent to all Participating Dentists, (1) Participating Dentists' usual and customary fees for each applicable service, provided that such information is collected uniformly from all Participating Dentists; and (2) data and information, including reimbursement levels, regarding other dental plans.

VI. Nullification

Delta's Most Favored Nation Clause shall be null and void and Delta shall impose no obligation arising from it on any Participating Dentist. Within 90 days of entry of this Final Judgment, Delta shall disseminate to each Delta Participating Dentist revised Rules and Regulations, referenced in the Participating Dentist's Agreement, that omit the Most Favored Nation Clause. Delta shall eliminate the Most Favored Nation Clause from all Participating Dentist's Agreements entered into after entry of this Final Judgment.

VII. Compliance Measures

The Delta shall:

(A) distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) all Delta officers and directors; and (2) all Delta employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with Participating Dentists.

(B) distribute in a timely manner a copy of this Final Judgment to any officer, director, or employee who succeeds to a position described in Section VII(A) (1) or (2);

(C) obtain from each present or future officer, director, or employee designated in Section VII(A) (1) or (2), within 60 days of entry of this Final Judgment or of the Person's succession to a designated position, a written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(D) maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VII(C), the certification has been obtained;

(E) distribute, within 60 days of the entry of this Final Judgment, a copy of the attached letter, which has been approved by the Antitrust Division, by first-class mail to all currently Participating Dentists; and

(F) report to the Plaintiff any violation of the Final Judgment.

VIII. Certification

(A) Within 100 days of the entry of this Final Judgment, Delta shall certify to the Plaintiff whether it has: (1) disseminated revised Rules and Regulations pursuant to Section VI; (2) distributed the Final Judgment in accordance with Section VII(A); (3) obtained certifications in accordance with Section VII(C); and (4) distributed copies of the attached letter in accordance with Section VII(E).

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, Delta shall file with the Plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of Sections IV, V, VI, and VII.

IX. Plaintiff's Access to Information

(A) to determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Delta made to its principal office, shall be permitted, subject to any legally recognized privilege:

(1) Access during Delta's office hours to inspect and copy all documents in the possession or under the control of Delta, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Delta and without restraint or interference from it, to interview officers, employees or agents of Delta, who may have Delta's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Delta's principal office, Delta shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) Delta shall have the right to be represented by counsel in any process under this Section.

(D) No information or documents obtained by the means provided in Section IX shall be divulged by the Plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(E) If at the time information or documents are furnished by Delta to Plaintiff, Delta represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Delta marks each pertinent page of such material, ''subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 days' notice shall be given by Plaintiff to Delta prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Delta is not a party.

(F) Nothing in this Final Judgment prohibits the Plaintiff from using any other investigatory method authorized by law.

X. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment; to modify or terminate any of its provisions, based on changed circumstances of fact or law warranting such action; to enforce compliance; and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____.

_____

United States District Judge.

Attachment

Attachment Referred to in Section VII(E)

As you may know, Delta Dental has been involved in a lawsuit with the United States Department of Justice in the United States District Court of Rhode Island regarding Rule 10 of Delta's Rules and Regulations for Dentists, which is sometimes called Delta's ''Prudent Buyer'' policy. Rule 10 has allowed Delta Dental to limit its payments to dentists to the lowest level the dentist had agreed to accept from any other non-governmental plan or from any uninsured patient.

Delta Dental and the Department of Justice have agreed to a consent decree that has been entered as an order of the District Court. As part of this consent decree, Delta has agreed to eliminate Rule 10 if its Rules and Regulations.

The consent decree declares Rule 10 null and void and prohibits Delta from varying its payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentists charges Delta. Within the next thirty (30) days, we will forward to you a superseding set of Rules and Regulations that omits Rule 10.

Sincerely yours,

_____

Director of Provider Relations.

[Civil Action No. 96–113P]

United States District Court for the District of Rhode Island

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), the United States submits this Competitive Impact Statement describing the proposal Final Judgment submitted to resolve this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February 29, 1996, the United States filed a civil antitrust compliant alleging that Delta Dental of Rhode Island (''Delta''), enters into agreements with its participating dentists that unreasonably restrain completion by inhibiting discounting of fees for denial care in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Compliant seeks injunctive relief to enjoin continuance of the violation.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce, or modify the Judgment or to punish violations of any of its provisions.

II. Practices Giving Rise to the Alleged Violation

If this matter had proceeded to trial, the United States would have introduced evidence as follows. Delta is Rhode Island's largest dental insurer, insuring or administering plans providing insurance to about 35–45% of Rhode Island residents covered by dental insurance. Delta seeks to offer its enrollees the broadest possible panel of dentists and contracts with over 90% of Rhode Island dentists. Delta accounts for a substantial percentage of the professional income of most Rhode Island dentists.

Pursuant to Delta's Participating Dentist's Agreement (the ''Agreement''), each contracting dentist agrees to comply with Delta's Rules and Regulations. Rule 10 of these Rules and Regulations is a Most Favored Nation (MFN) clause, which provides that Delta has the right to lower the fees it pays a dentist to the level of the lowest fees that that dentist charges any other plan. Delta has applied its MFN clause also to dentists' charges to uninsured patients. Rule 7 gives Delta the additional right to audit dentists' records to determine whether they are complying with the MFN clause.

In contrast to Delta's program, which by design includes as many dentists as possible, some dental plans such as preferred provider organizations (''PPOs'') and health maintenance organizations (''HMOs''), contract selectively with a limited panel of dentists. By offering the prospect of increased patient volume, these managed care plans are able to contract with some dentists for services at fees substantially below Delta's. These plans then create financial incentives for their enrollees to use panel dentists. Selective contracting with dentists helps a managed dental care plan lower the cost of the delivery of dental service to its enrollees. Accordingly, these plans are able to offer patents lower premiums and lower out-of-pocket costs.

Delta currently provides so much more of most Rhode Island dentists' income than would any entering managed care plan that if these dentists were to reduce their fees to such plans, the resulting reduction in their income from Delta would be much greater than their added income from the entrant plan. Because few dentists in Rhode Island are not under contract with Delta, and because Delta's MFN clause gives its participating dentists strong disincentives to contract with dental managed care plans at fees below Delta's, other plans have been unable to form a competitively viable panel. By thus excluding from the dental insurance market reduced-cost plans that many consumers view as an important option, Delta's MFN clause has protected Delta from competition from such lower-cost plans at the expense of consumers.

In recent years, Delta's MFN clause has blocked the entry or expansion of several low-cost plans. For example, Delta's MFN clause caused dentists to withdraw from Dental Blue PPO—a low-cost preferred provider organization established in the fall of 1993 by Blue

Cross and Blue Shield of Massachusetts to serve Raytheon employees and their dependents, including the approximately 1,000 employees and their dependents at Raytheon's facility in Portsmouth, Rhode Island. Dental Blue PPO had initially succeeded in contracting with a number of Rhode Island dentists at substantially discounted rates—rates, by Delta's calculations, that were 14% lower than Delta's. These PPO savings would have significantly reduced or eliminated Raytheon plan members' co-payments.

After identifying Dental Blue PPO as a long-run competitive threat, Delta's senior management pursued several related tactics. First, it contacted the former chairman of the Rhode Island Dental Association (''RIDA'')'s Council on Dental Programs, who supports Delta's MFN clause because he believes it sets a floor on dentists' fees. He sent RIDA's members a letter warning that because of Delta's MFN clause dentists would face ''severe financial penalties'' if they contracted with dental Blue PPO. Second, Delta's management sent a letter to Rhode Island dentists who Delta knew to be participating in Dental Blue PPO, announcing its intention to apply its MFN clause and describing the new, reduced payment levels they would receive from delta if they continued to participate in Dental Blue PPO.

By the end of January 1994, all of the dentists contacted by Delta had withdrawn from Dental Blue PPO. Some of them made clear to Delta at the time that the reason for their withdrawal was Delta's decision to apply its MFN clause and requested that Delta return their payments to former levels. As a result, Raytheon employees were denied the opportunity to lower or eliminate their co-payments for dental care, and Rhode Island was denied the entry of a low-cost dental insurance plan.[1]

Delta's MFN clause also caused dentists to refuse to contract, at fees below levels paid by Delta, with at least two other lower-cost plans. In one instance, U.S. Healthcare attempted to establish a plan in Rhode Island (as it had in other states) that would have paid dentists at fee levels lower than Delta's. Rhode Island dentists uniformly refused to participate because they feared that Delta would apply its MFN clause. Similarly, Delta's participating dentists refused, because of Delta's MFN clause, to contract with dental Benefit Providers (''DBP'') at fee levels below Delta's, forcing DBP to pay Delta's higher rates to enter the market and depriving consumers of a low-cost alternative.

Delta's MFN clause also prevented two other organizations—a self-insured employee group and an uninsured retiree group—from recruiting additional dentists, at fee levels substantially below Delta's, to augment their limited panels of dentists. Both had persuaded a few Rhode Island dentists to accept fees substantially below Delta's and both had avoided the application of Delta's MFN clause—despite Delta's commitment to enforce the clause—only because Delta had been unaware of their operation. Although both wanted to expand their panels, they refrained from recruiting additional dentists because of their concern that such efforts would disclose their existence to Delta and trigger Delta's enforcement of its MFN clause, causing their existing dentists to disaffiliate. As a result, some members of these groups were denied more accessible, low-cost dental care that would have been available in the absence of the MFN clause.

Although the language of Delta's MFN clause appears to apply only to fees dentists offer to insurance plans, Delta has also on occasion enforced the MFN when dentists have lowered their fees to uninsured patients. Some dentists who have been willing to serve uninsured patients at reduced rates have suffered an added financial penalty imposed by Delta. As a result, they and other dentists have been deterred from offering discounts to uninsured patients. Delta's MFN clause has thus raised the prices, and reduced the availability, of dental services to some of Rhode Island's most vulnerable consumers.

By Delta's own admission, its MFN clause has not generated any meaningful savings or other procompetitive benefits. Far from saving consumers money, Delta's MFN clause has, in fact, eliminated most discounting by dentists below Delta's fees, and—as recognized by the former chairman of the RIDA's Council on Dental Programs—set a floor on dental fees, thus raising the costs of dental services and dental insurance for Rhode Island consumers.

III. Explanation of the Proposed Final Judgment

The Plaintiff and Delta have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party of any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section X(C) of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that Delta eliminates its MFN clause and ceases all similar practices that unreasonably restrain competition among dentists and dental insurance plans.

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to Delta, to its successors and assigns, and to all other persons (including Delta's participating dentists) in active concert or participation with any of them, who shall have received actual notice of the Final Judgment by personal service or otherwise.

In the Stipulation to the proposed Final Judgment, Delta has agreed to be bound by the provisions of the proposed Final Judgment pending its approval by the Court.

B. Prohibitions and Obligations

Under Section IV(A) of the proposed Final Judgment, Delta is enjoined and restrained for a period of ten years from maintaining, adopting, or enforcing any Most Favored Nation Clause or similar provision in any Participating Dentist's Agreement or by any other means or methods. Other provisions of the Final Judgment seek to ensure that the MFN clause's anticompetitive effects cannot be achieved in other ways. Specifically, Section IV(B) enjoins Delta from maintaining, adopting, or enforcing any policy or practice varying its payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentist charges Delta; Section IV(C) enjoins Delta from taking any action to discourage any dentist from participating in any non-Delta plan or from offering or charging to any non-

[1] Delta's application of its MFN clause to the Dental Blue PPO demonstrates that Delta has not enforced the clause when a dentist, who had initially agreed to charge another plan substantially lower fees, then raised the fees to Delta's level or disaffiliated from the plan. Delta's approach suggests that Delta applied its MFN clause to prevent the entry of a new, low-cost rival, not just to ensure that it obtained the lowest prices available.

Delta indeed did develop a contingency plan to compete on price with Dental Blue PPO by forming its own limited-panel, reduced-fee PPO. When Delta's MFN clause brought about the collapse of the Dental Blue PPO, however, Delta shelved its PPO plans. Rhode Island consumers thus remained without a limited panel, lower-cost competitive alternative to Delta's existing, mid-range plan.

Delta patient, or any non-Delta plan, any fee lower than that paid to the dentist by Delta; and Section IV(D) enjoins Delta from monitoring, auditing, or obtaining from any dentist information about the fees a particular dentist charges any non-Delta patient or any non-Delta plan, except as provided in Section V.

Section V permits Delta to engage in certain specified activities without violating the prohibitions of Section IV, including creation of a limited-panel plan, implementation of different reimbursement levels under certain circumstances, and collection through certain means of information about market rates. These activities will likely facilitate, rather than impair, competition.

Section VI of the Final Judgment declares Delta's MFN clause null and void. It directs Delta to disseminate to each Delta participating dentist revised Rules and Regulations, referenced in the Participating Dentist's Agreement, that omit the Most Favored Nation Clause. This Section also requires Delta to eliminate the Most Favored Nation Clause from all Participating Dentist's Agreements entered into after entry of the Final Judgment.

Section VII of the Final Judgment imposes various compliance measures. Section VII(A) requires Delta to distribute, within 60 days of entry of the Final Judgment, a copy of the Final Judgment to: (1) all Delta officers and directors; and (2) all Delta employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with participating dentists. Sections VII(B)-(D) require Delta to provide a copy of the Final Judgment to future officers, directors, and employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with participating dentists and to obtain and maintain records of such persons' written certifications that they have read, understand, and will abide by the terms of the Final Judgment. Section VII(E) requires Delta to distribute a copy of a letter, approved by the Antitrust Division and attached to the Final Judgment, to all currently participating dentists. Section VII(F) obligates Delta to report to the Plaintiff any violation of the Final Judgment.

Finally, Section VIII obligates Delta to certify its compliance with specified requirements, summarized above, of Sections IV, V, VI, and VII of the Final Judgment. In addition, Section IX sets forth a series of measures by which the Plaintiff may have access to information needed to determine or secure Delta's compliance with the Final Judgment.

C. Effect of the Proposed Final Judgment on Competition

By eliminating the MFN clause, the relief imposed by the proposed Final Judgment will enjoin and eliminate a substantial restraint on price competition between Delta and other dental insurance plans and among dentists in Rhode Island and its environs. It will do so by eliminating the disincentives created by the MFN clause for dentists to discount their fees and to join non-Delta plans offering payments below Delta's levels. The Judgment also prevents Delta from taking any other action to discourage dentists from discounting or participating in competing dental insurance plans. Consequently, non-Delta plans' efforts to attract and maintain viable panels of dentists to serve their members will no longer be hampered.

The proposed Final Judgment will restore the benefits of free and open competition to dental insurance plans and consumers in Rhode Island. Consequently, limited panel dental insurance plans should be able to achieve cost savings that they can pass on to consumers, and consumers should be able to choose from a wider array of dental insurance alternatives. Competition among dentists should also be invigorated.

IV. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. Such a trial would involve substantial costs to both the United States and Delta and is not warranted because the proposed Final Judgment provides all of the relief that the United States would likely obtain upon a favorable decision at the close of trial and fully remedies the violations of the Sherman Act alleged in the Complaint.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against Delta in this matter.

VI. Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Health Care Task Force; Department of Justice; Antitrust Division; 325 7th Street, N.W.; Room 404; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is necessary to protect the public interest. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VII. Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Dated: February 19, 1997.

Respectfully submitted,

Steven Kramer,
William E. Berlin
Mark J. Botti,
Michael S. Spector,
Richard S. Martin,
Attorneys, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 426, Washington, D.C. 20530, (202) 307-0997.

United States District Court for the District of Rhode Island

[Civil Action No. 96–113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Certificate of Service

I certify that I caused a copy of the Stipulation, the Final Judgment, and the United States' Competitive Impact

Statement to be served on February 20, 1997, by overnight delivery to:

William R. Landry, Blish & Cavanagh, Commerce Center, 30 Exchange Terrace, Providence, R.I. 02903-1765

and by first class mail to:

William G. Kopit, Epstein Becker & Green, 1227 25th Street, N.W., Washington, D.C. 20037.

Dated: February 20, 1997.

Steven Kramer,

Attorney, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 426, Washington, D.C. 20530, (202) 307-0997.

[FR Doc. 97–5151 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on February 4, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and providing information on the status of its research projects. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: Advanced Technology & Research Corporation, Burtonsville, MD; Lockheed Martin Corporation, Idaho Falls, ID; OMNEX Engineering & Management, Inc., Ann Arbor, MI; and Structural Dynamics Research Corporation, Milford, OH. Software Productivity Consortium NFP, Inc., Herndon, VA, was approved for affiliate membership. Cimflex Teknowledge Corporation, Palo Alto, CA, changed its name to Teknowledge Corporation, and ICAD, Inc., Burlington, MA, has changed its name to Concentra Corporation. The McNeal-Schwendler Corporation, Los Angeles, CA, acquired Aries Technology, Inc. and subsequently became a member of NCMS. The following companies have canceled their active membership in NCMS: Andersen Consulting LLP, Detroit, MI; Computer Tool & Die Systems, Inc., Ann Arbor, MI; Knowledge Based Systems, Inc., College Station, TX; Physical Sciences Inc., Andover, MA; C. Thorrez Industries, Inc., Jackson, MI; and Weed Instrument Company, Inc., Simi Valley, CA. The following organizations have resigned from affiliate membership in NCMS: American Supplier Institute, Allen Park, MI; Les Chefs Mailleurs de la Qualite, Quebec City, Quebec, Canada.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on November 24, 1996. This notice was published in the Federal Register on December 19, 1996 (61 FR 67067).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–5246 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Ole for Process Control (OPC) Foundation

Notice is hereby given that, on December 18, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Ole for Process Control Foundation (''OPC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: ABB Asea Brown Boveri Ltd., Zurich, SWITZERLAND; Applicorn International S.A., Caudebec Les Elbeuf, FRANCE; Biles & Associates, Houston, TX; Canary Labs, Inc., Martinsburg, PA; Ci Technologies Pty Limited, Pymble, NSW, AUSTRALIA; Dynapro Systems, Inc., New Westminster, BC, CANADA; Hardy Software Systems, Inc., Houston, TX; Honeywell, Inc., Phoenix, AZ; ICONICS, INC., Foxborough, MA; Institut fur Automation und Kommunikation e. V. Magdeburg, Barleben, GERMANY; Johnson Yokogawa Corporation, Newnan, GA; National Instruments, Austin, TX; OMNX Control Systems, Charleston, TN; PID, Phoenix, AZ; Process Automation Systems, Inc., Vancouver, BC, CANADA; ProMicro Ltd., London, ENGLAND; RDI Software Technologies, Inc., Des Plaines, IL; Roy-G-Biv Corporation, Seattle, WA; S–S Technologies, Inc., Kitchener, ON, CANADA; Siemens AG, AUT 1E Nuremberg, GERMANY; SoftPLC Corporation, Humble, TX; Star Enterprise, Houston, TX; TA Engineering Co., Inc., Moraga, CA; The Foxboro Company, Foxboro, MA; The Software Studio, Inc., Cupertino, CA; Toshiba Corporation, Tokyo, JAPAN; Trebing & Himstedt Prozessautomation GmbH & Co. KG, Schwerin, GERMANY; and Wonderware Corporation, Irvine, CA. One member, Rockwell Software, Inc., has moved from Milwaukee, WI to West Allis, WI.

No other changes have been made in either the membership or planned activity of OPC. Membership in this venture remains open and OPC intends to file additional written notifications disclosing all membership changes.

On July 15, 1996, the Ole for Process Control Foundation (''OPC''), filed its original notification pursuant to § 6(b) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act on August 14, 1996 (61 Fed. Reg. 42269).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–5248 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; VSI Alliance

Notice is hereby given that, on November 29, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.*. (''the Act''), the VSI Alliance (''VSI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Advanced RISC Machines Ltd., Cambridge, ENGLAND; Cadence Design Systems, Inc., San Jose, CA; Fujitsu Limited, Kawasaki, JAPAN; Mentor Graphics Corporation, Wilsonville, OR; Sony Corporation, Tokyo, JAPAN;

Synopsys, Inc., Mountain View, CA; and Toshiba Corporation, Kawasaki, JAPAN.

VSI's area of planned activity is to define, develop, ratify, test and promote open interface specifications which will facilitate the mix-and-match of intellectual property blocks from different sources onto a single silicon chip—much like combining various integrated circuits or other components onto a printed circuit board. By defining ''Virtual Socket Interfaces'' (hence the name ''VSI''), VSI hopes to enable the use or reuse of intellectual property blocks from different sources in the design of ''systems-chips'', thereby shortening the design cycle and promoting the growth of the systems-chips industry. These open specifications will be designed to allow the mix-and-match of system-level-module intellectual property (including analog, digital, mixed signal and software intellectual property), as it relates to the design and development of systems-chips.

Membership in the VSI Alliance will be open to any individual or entity that is interested in supporting the objectives and goals of VSI and subscribes to its bylaws and membership agreements.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–5249 Filed 3–3–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 27, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Teresa M. O'Malley ((202) 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Application for Authority for an Institution of Higher Learning to Employ its Full-Time Students at Subminimum Wages Under Regulations at 29 CFR Part 519.

OMB Number: 1215–0080 (extension).

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Respondent: 15 to 30 minutes.

Total Burden Hours: 15.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $17.50.

Description: The Form WH–201 is completed by an employer, in order to obtain authorization, pursuant to section 14(b) of the Fair Labor Standards Act to pay full-time students at a wage rate lower than the statutory Federal minimum wage. If this information was not collected, employers would not have a mechanism to apply for permission to pay full-time students at subminimum wages, and job opportunities for full-time students would be reduced.

Agency: Bureau of Labor Statistics.

Title: Consumer Expenditure Surveys.

OMB Number: 1220–0050 (revision).

Affected Public: Individuals or households.

Form No.	Frequency	Number of respondents	Average time per response
Quarterly	Quarterly	6,438	363.60 min.
Diary	Two Consecutive Weekly Reports	5,489	286.20 min.

Total Burden House: 65,107.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Consumer Expenditure Surveys are used to gather information on expenditures, income, and other related subjects. These data are used to periodically update the National Consumer Price Index. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–5262 Filed 3–3–97; 8:45 am]

BILLING CODE 4510–23–M

LEGAL SERVICES CORPORATION

Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on March 7, 1997. The meeting will begin at 9:30 a.m. and continue until the committee concludes its agenda.

LOCATION: Legal Services Corporation, 750 First Street, N.E.,—11th Flr. Board Room, Washington, D.C. 20002.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session of the Committee. At the executive session, the Corporation's counsel will report to the Committee on litigation to which the Corporation is or may become a party. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. § 552b(c)(10)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be posted for public inspection at Corporation headquarters, 750 First Street N.E., Washington, D.C.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of January 5, 1997.
3. Consider and act on revisions to the Corporation's Personnel Manual, with principal attention devoted to sections 1, 2, 3 and 8.
4. Consider and act on draft revisions to 45 C.F.R. Part 1642, the Corporation's interim regulation on attorneys' fees.

Closed Session

5. Report from the General Counsel on potential and pending litigation involving the Corporation.

Open Session

6. Consider and act on draft interim revisions to 45 C.F.R. Part 1610, the Corporation's regulation on use of non-LSC funds.
7. Consider and act on proposed revisons to the Corporation's Accounting Guide for Recipients and Auditors.
8. Consider and act on draft revisions to 45 C.F.R. Part 1639, the Corporation's interim regulation on welfare reform.
9. Consider and act on proposed 45 C.F.R. Part 1641, a new regulation on Debarment, Suspension and Removal of Recipient Auditors.
10. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante at (202) 336–8892.

Dated: February 28, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–5442 Filed 2–28–97; 2:44 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting of the Corporation's Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on March 8, 1997. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street N.E.—11th Flr. Board Room, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of January 6, 1997, open session.
3. Chairman's and Members' Reports.
4. President's Report.
5. Inspector General's Report.
6. Consider and act on the report of the Board's Operations and Regulations Committee:
   a. Consider and act on final revisions to sections 1, 2, 3 and 8 of the Corporation's Personnel Manual.
   b. Consider and act on draft revisions to 45 CFR Part 1642, the Corporation's interim regulation on attorneys' fees.
   c. Consider and act on interim revisions to 45 CFR Part 1610, the Corporation's regulation on use of non-LSC funds.
   d. Consider and act on proposed revisions to the Corporation's Accounting Guide for Recipients and Auditors.
   e. Consider and act on draft revisions to 45 CFR Part 1639, the Corporation's interim regulation on welfare reform.
   f. Consider and act on proposed 45 CFR Part 1641, a new regulation on Debarment, Suspension and Removal of Recipient Auditors.
7. Consider and act on proposed policies and procedures relating to communications between the Corporation and Congress.
8. Consider and act on proposed policies and procedures for annual performance reviews of the Corporation's President and Inspector General.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Provision Committee.
11. Consider and act on the report of the Board's Presidential Search Committee.
12. Consider and act on a resolution upgrading the Corporation's service contract with Mutual of America to provide a Full Services Arrangement for the Corporation's 403(b) Thrift Plan.
13. Public comment.
14. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 28, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–5443 Filed 2–28–97; 2:44 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on March 7, 1997. The meeting will begin at 2 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of January 5, 1997.
3. Presentation of report of Thompson, Cobb, Bazillo & Assoc. on their audit of the Corporation's Fiscal Year 1996 financial statements.
4. Review and consideration of the Corporation's FY '97 budget and expenses through January 31, 1997.
5. Presentation of staff report on the Corporation's office space planning.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 28, 1997.
Victor M. Fortuno,
General Counsel.
[FR Doc. 97–5444 Filed 2–28–97; 2:44 pm]
BILLING CODE 7050–01–P

Sunshine Act Meeting of the Presidential Search Committee of the Board of Directors

TIME AND DATE: The Presidential Search Committee of the Legal Services Corporation Board of Directors will meet on March 8–9, 1997. The meeting will begin at 3:00 p.m. on March 8, 1997, and continue on March 9, 1997, until conclusion of the committee's agenda.

STATUS OF MEETING: With the exception of the adoption of the agenda and the approval of minutes, the meeting will be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the executive session, the Committee will interview candidates for the position of president of the Corporation. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. § 552b(c)(2) & (6)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. § 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be posted for public inspection at Corporation headquarters, 750 First Street N.E., Washington, D.C. 20002, in its 11th floor reception area, and will also be available upon request.

LOCATION: Washington Court Hotel, 525 New Jersey Avenue, N.W., Washington, D.C. (202) 628–2100.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of February 20 and 27, 1997.

CLOSED SESSION:

3. Interview with candidates for the position of President of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel & Secretary of the Corporation, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 28, 1997.
Victor M. Fortuno,
General Counsel.
[FR Doc. 97–5445 Filed 2–28–97; 2:44 pm]
BILLING CODE 7050–01–P

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation's Board of Directors will meet on March 7, 1997. The meeting will begin at 2 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 10th Floor, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of January 5, 1997, meeting of the Committee.
3. Report by the Corporation's Inspector General on the status of implementation of § 509 of Pub. L. 104–134.
4. Status report on activities of the Office of Program Operations, including its reorganization, the status of competition for 1997 grants, restrictions enforcement and follow-up, the Americorps Project, and other matters.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: February 26, 1997.
Victor M. Fortuno,
General Counsel.
[FR Doc. 97–5446 Filed 2–28–97; 2:44 pm]
BILLING CODE 7050–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 25, 1997.

TIME AND DATE: 11:30 a.m., Thursday, February 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. Secretary of Labor versus Broken Hill Mining Co., Docket No. KENT 94–1199, etc. No earlier announcement of the scheduling of this meeting was possible.

TIME AND DATE: 10:00 a.m., Thursday, March 6, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor versus Broken Hill Mining Co., Docket No. KENT 94–1208 (Issues include whether the judge correctly applied the penalty criteria of 30 U.S.C. § 820(i) in assessing a penalty against the operator for its violation of 30 CFR § 75.1702's prohibition against carrying smoking materials underground).

TIME AND DATE: 2:00 p.m., Thursday, March 6, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor versus Western Fuels—Utah, Inc., Docket No. WEST 93–298 (Issues include whether the judge erred in finding that the operator's malfunctioning slippage and sequence switches on its conveyor belt did not violate 30 CFR § 75.1102 and that the operator's insufficient sensing devices on its dry chemical fire suppression system did not violate 30 CFR § 75.1101–16(a), and whether the judge erred in vacating as duplicative a citation alleging a violation of 30 CFR § 75.1101–14(a) because the citation was also abated by conduct taken by the operator to abate a separate violation of 30 CFR § 75.1101–15(d)).

TIME AND DATE: 10:00 a.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 94–74 (Issues include whether the judge's conclusion that the operator's violation

of 30 CFR 75.400's prohibition against accumulations of combustible materials was significant and substantial is legally correct and supported by substantial evidence and whether the judge's conclusion that the violation was due to the operator's unwarrantable failure is supported by substantial evidence).

TIME AND DATE: 11:15 a.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the commission consider and act upon the following in closed session:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 94–74 (See oral argument listing, *supra,* for issues).

TIME AND DATE: 2:00 p.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 95–267 (Issues include whether the judge was correct in determining that the operator's failure to extend a line curtain within 40 feet of a working face, as required by its ventilation plan, was the result of the operator's unwarrantable failure).

TIME AND DATE: 3:15 p.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. Secretary of Labor versus Amax Coal Co., Docket No. LAKE 95–267 (See oral argument listing, *supra,* for issues).

Any person attending oral argument or an open meeting who required special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–5340 Filed 2–27–97; 5:04 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: March 21, 1997 from 8:00AM to 9:00PM.

Place: Room 1020, NSF 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. David Berley, Program Manager for LIGO, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Gravitational Physics proposals regarding LIGO as part of the selection progress for awards.

Reason for Closing: The project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resources Management, Acting Committee Management Officer.

[FR Doc. 97–5288 Filed 3–3–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 247]

Consolidated Edison Company of New York; Notice of Consideration of Issuane of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Consolidated Edison Company of New York, Inc. (Con Edison or the licensee) for operation of the Indian Point Nuclear Generating Station Unit 2 (IP2) located in Westchester County, New York.

The proposed amendment would permit a one-time only extension of the current steam generator tube inservice inspection cycle. Technical Specification 4.13A.2.a requires steam generator tube examinations to be conducted at not less than 12 months and no later than 24 calendar months after the previous examination. Based upon the last examination during the 1995 refueling outage being completed on April 14, 1995, operation of the unit after April 14, 1997, would not be permitted. Con Edison proposes a one-time extension of the examination requirements, scheduled to be conducted during the 1997 refueling outage, to commence no later than May 2, 1997. Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration since:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical modifications to the plant or modification in the methods of plant operation which could increase the probability or consequences of previously evaluated accidents. The proposed change permits a one-time only extension of the current steam generator tube inservice inspection cycle. This extension would allow the steam generator tube examinations to be conducted during the 1997 refueling outage which will commence no later than May 2, 1997. The basis for acceptance of this increase in the technical specification limit is

the 'non-operating' steam generator time between the last examination and the upcoming examination. No appreciable steam generator tube wear or degradation is expected as a result of this extension. This change will not affect the scope, methodology, acceptance limits and corrective measures of the existing steam generator tube examination program. The probability and consequences of failure of the steam generators due to leaking or degraded tubes is not increased by the proposed change. Therefore, the probability and the consequence of a design basis accident are not being increased by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specification change. The proposed change permits the upcoming steam generator tube examination to be conducted during the 1997 refueling outage that will commence no later than May 2, 1997. There are no plant modifications or changes in methods of operation. Since this extension is based upon the 'non-operating' steam generator time between the last examination and the upcoming examination, it will not increase the probability of occurrence of a tube rupture, increase the probability or consequences of an accident, or create any new accident precursor. Therefore, the possibility for an accident of a different type than was previously evaluated in the safety analysis report is not created by the proposed change to the Technical Specification.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to Technical Specification section 4.13A.2.a will not reduce the margin of safety. This amendment involves a one-time only extension of the current steam generator tube inservice inspection cycle. The basis for acceptance of this increase in the technical specification limit is the 'non-operating' steam generator time between the last examination and the upcoming examination. No appreciable steam generator tube wear or degradation is expected as a result of this extension. Therefore, the accident analysis assumptions for design basis accidents are unaffected and the margin of safety is not decreased by the proposed Technical Specification change.

Based on the preceding analysis, it is concluded that operation of Indian Point Unit No. 2 in accordance with the proposed amendment does not increase the probability of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, nor reduce any margin of plant safety. Therefore, the license amendment does not involve a Significant Hazards Consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 3, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the

petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to S. Singh Bajwa: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 14, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 26th day of February 1997.

For the Nuclear Regulatory Commission.

Jefferey F. Harold,

Project Manager, Project Directorate 1–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5251 Filed 3–3–97; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 3, 10, 17, and 24, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 3

There are no meetings scheduled for the Week of March 3.

Week of March 10—Tentative

Monday, March 10

10:30 a.m. Briefing on 10 CFR 50.59 Regulatory Process Improvements (PUBLIC MEETING) (Contact: Eileen McKenna, 301–415–2189)

2:30 p.m. Briefing on Implementation of Maintenance Rule, Revised Regulatory Guide, and Consequences (PUBLIC MEETING) (Contact: Suzanne Black, 301–415–1017)

Thursday, March 13

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 17—Tentative

There are no meetings scheduled for the Week of March 17.

Week of March 24—Tentative

Tuesday, March 25

10:00 a.m. Briefing on High-Burnup Fuel Issues (PUBLIC MEETING) (Contact: Ralph O. Meyer, 301–415–6789)

11:30 a.m. Affirmation Session (PUBLIC MEETING) (if needed)

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 451–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 28, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–5441 Filed 2–28–97; 2:43 pm]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

[Public Notice No. 2513]

United States International Telecommunications Advisory Committee (ITAC) Study Groups B and D; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Study Group B will meet on Friday, March 14, 1997 at the Regal Harvest House, 1345 28th Street, Boulder, Colorado from 10:00 a.m. to 4:00 p.m. Study Group D will meet on Tuesday, April 1, 1997, Room 1207 at the U.S. Department of State, 2201 ''C'' Street, NW., Washington, DC 20520 from 9:00 a.m. to 3:00 p.m.

The agenda for the Study Group B meeting of March 14, will review results of the January meeting of Study Group

11 and the February meeting of Study Group 13. It also will review contributions for the April meeting of Study Group 15, as well as any other business of SG B. Please bring 25 copies of proposed contributions to the meetings unless documents have been previously mailed. In the later case, bring only 5 copies. Alternately, contributions endorsed by a U.S. standards body can be brought in for consideration and approval. For agenda planning purposes, please notify Marcie Geisinger on 303–497–5810 not later than 5 days before the meeting if you plan to attend the March 14 meeting.

The agenda for the April 1 meeting of Study Group D will review the results of the March meetings of Study Groups 7 and 16, consider contributions for the April 21–25 meeting of Study Group 9, consider nominations for a U.S. delegation to the meeting of Study Group 9, and any other business relevant to U.S. Study Group D. Please bring 25 copies of documents to be considered at the April 1 meeting.

Please Note: Persons intending to attend the April 1 U.S. Study Group D meeting must announce this not later than 48 hours before the meeting to the Department of State by sending a fax to 202–647–7407. The announcement must include name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: February 13, 1997.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 97–5225 Filed 3–3–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97]

Information Collection Activity

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of information collection approval

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the emergency approval by the Office of Management and Budget (OMB) of an information collection request (ICR). An emergency interim final rule (IFR) regarding cargo tank motor vehicles in liquefied compressed gas service contained the ICR and was published in the Federal Register on February 19, 1997, in Docket No. RSPA–97–2133 (HM225) with a 60-day comment period (62 FR 7638). The ICR describes the nature of the information collection and its expected cost and burden.

DATES: OMB approval of the information collection request expires August 15, 1997.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, S.W., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: OMB regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13; 109 Stat.163; 44 U.S.C. 3501 *et seq.*) require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). Under the PRA, no person is required to respond to an information collection unless it displays a valid OMB control number.

The IFR requires that a comprehensive emergency operating procedure be developed for all liquefied compressed gas transfer operations. The information collection and recordkeeping requirements contained in the IFR have received emergency approval by OMB under the provisions of the PRA. The OMB control number for the information collection is 2137–0595, and the approval expires August 15, 1997. The comment period for the IFR, including the information collection requirements, closes April 21, 1997. If RSPA receives substantive comments on the information collection requirements, a revised ICR will be submitted to OMB for emergency approval. RSPA estimates that the total information collection and recordkeeping burden of the IFR is 18,753 hours, at a cost of $422,660, for the development and maintenance of the comprehensive emergency operating procedure. Requests for a copy of this information collection should be directed to the address above.

Issued in Washington, DC on February 27, 1997.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 97–5294 Filed 3–3–97; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB No. MC–F–20904]

Peter Pan Bus Lines, Inc.; Pooling; Greyhound Lines, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed pooling application.

SUMMARY: Applicants, Peter Pan Bus Lines, Inc., of Springfield, MA, and Greyhound Lines, Inc., of Dallas, TX, jointly seek approval under 49 U.S.C. 14302 of an operations and revenue pooling agreement to govern their motor passenger and express transportation service between Philadelphia, PA, and New York, NY.

DATES: Comments are due by April 7, 1997, and, if comments are filed, applicants' rebuttal is due by April 25, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to STB No. MC–F–20904 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1201 Constitution Avenue, NW., Washington, DC 20423.[1] Also, send one copy of comments to applicants' representatives: Jeremy Kahn, 1730 Rhode Island Ave., NW., Washington, DC 20036; and Fritz R. Kahn, 1100 New York Ave., NW., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660 [after March 16, 1997, (202) 565–1600]. [TDD for the hearing impaired: (202) 927–5721 (after March 16, 1997, (202) 565–1695).]

SUPPLEMENTARY INFORMATION: Applicants seek approval to pool passenger and express operations and revenues on the bus service they provide between Philadelphia and New York, via the New Jersey Turnpike. They state that their services between these points overlap and that excess schedules are operated because of the need to protect their respective marketshares. According to applicants, this has resulted in unacceptably low load factors, an over-served market, and inefficient operations.

Applicants state that the pooling agreement will allow them to reduce excess bus capacity, cement their business relationship, and allow them to share in the financial vicissitudes of the pooled-route operations of the other. They claim public benefits that will include: (1) Rationalization of schedules

[1] After March 16, 1997, when the Board's offices will be relocated, pleadings should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

with more frequent bus service over a broader time period; (2) greater flexibility for passengers to use buses, tickets, and terminals; (3) capital improvements; (4) continued bus service by more sound and financially stable carriers; and (5) a salutary effect on the environment.

Applicants state that competition will not be unreasonably restrained. They argue that: (1) the pooled service is subject to overwhelming intermodal competitive pressure from Amtrak, airlines, and private automobiles; and (2) other motor passenger carriers may easily enter and compete in the market.

Copies of the application may be obtained free of charge by contacting applicants' representatives. A copy of this notice will served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC. 20530.

Decided: February 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5282 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33366]

Paducah & Louisville Railway, Trackage Rights Exemption, CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Paducah & Louisville Railway (P&L) from the P&L/CSXT connection at a point approximately 2,100 feet north of milepost 179 at Central City, KY, to approximately milepost 172 south of Drakesboro, KY, and between Drakesboro (Valuation Station 0+00) and the junction with trackage leased to Midwest Coal Handling Co., Inc. (Valuation Station 47+88), a total distance of approximately 8.9 miles in Muhlenberg County, KY.

The transaction is scheduled to be consummated on March 1, 1997.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33366, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on J. Thomas Garrett, Esq., Paducah & Louisville Railway, 1500 Kentucky Avenue, Paducah, KY 42003.

Decided: February 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5280 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–485X]

Blue Mountain Railroad, Inc., Abandonment Exemption, in Whitman County, WA, and Latah County, ID

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption and interim trail use or abandonment.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10903–05 the abandonment by Blue Mountain Railroad, Inc., of three segments of its rail line located between: (1) milepost 19.0 at Kamiaken Street and milepost 19.30 at Pullman, WA; (2) milepost 19.75 at Pullman and milepost 25.50 near Moscow, ID; and (3) milepost 26.10 near Moscow and milepost 27.50 at Line Street in Moscow, totaling 7.45 miles, in Whitman County, WA, and Latah County, ID, subject to labor protective conditions, an historic preservation condition, and environmental conditions.[1]

DATES: This exemption will be effective on March 4, 1997. Petitions to reopen must be filed by March 31, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–485X to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1201 Constitution Avenue, NW., Washington, DC 20423,[2] and (2) Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660; after March 15, 1997, (202) 565–1600. [TDD for the hearing impaired: (202) 927–5721; after March 15, 1997, (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.][3]

Decided: February 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5281 Filed 3–3–97; 8:45 am]

BILLING CODE 4915–00–P

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[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

[1] BMR will retain two segments of the line between mileposts 19.30 and 19.75 at Pullman and mileposts 25.50 and 26.10 near Moscow, for use in serving the two local shippers on the line.

[2] Effective March 17, 1997, the Board's offices will be relocated and pleadings should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

[3] Effective March 17, 1997, DC News & Data, Inc., will relocate its offices to 1925 K Street, NW., Suite 210, Washington, DC 20006 [telephone: (202) 289–4357].

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995, concerning proposed extensions of information collection requirements, the Financial Crimes Enforcement Network (FinCEN) is soliciting comments concerning a revision of Internal Revenue Service (IRS) Form 8362, Currency Transaction Report by Casinos (CTRC) which is filed for currency transactions involving casinos under the Bank Secrecy Act regulations.

DATES: Written comments must be received on or before May 5, 1997.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Regulatory Policy and Enforcement, Attn.: CTRC Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536. Comments may also be submitted by Internet e-mail to RegComments@fincen.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to Leonard Senia, Senior Financial Enforcement Officer; Office of Regulatory Policy and Enforcement, (703) 905–3931, or by inquiry to the Internet e-mail address shown above. A copy of the CTRC form, as well as all other forms required by the Bank Secrecy Act, can be obtained through the Internet at http://www.irs.ustreas.gov/prod/forms-pubs/forms.html.

SUPPLEMENTARY INFORMATION: The Currency and Foreign Transactions Reporting Act (commonly known as the Bank Secrecy Act) Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5326, 5328–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (BSA) (codified at 31 U.S.C. 5311–5314, 5316–5326, 5328–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA regulations has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically authorizes the Secretary to issue regulations that require a report when ''a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes * * *'' See 31 U.S.C. 5313(a). The BSA also defines casinos as financial institutions. 31 U.S.C. 5312(a)(2)(X). *See* 31 CFR 103.11(n)(7)(i). The authority of 31 U.S.C. 5313(a) to require domestic financial institutions to report certain transactions has been implemented through regulations promulgated at 31 CFR 103.22(a)(2) and through promulgation of the CTRC, IRS Form 8362.

Information collected on the CTRC is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is used for regulatory purposes and in investigations involving international and domestic money laundering, tax violations, fraud, and other financial crimes.

This notice proposes changes to the current text of the CTRC and to its instructions, as well as the extension of this information collection requirement. The CTRC is being revised to enhance its value to law enforcement personnel and, in many instances, to simplify it by eliminating non-critical items. Also, FinCEN intends to replace the current OMB Control Number for this collection requirement with a new OMB Control Number. This technical change will facilitate FinCEN's oversight over BSA information collection requirements by obtaining a unique OMB Control Number for each form.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on the CTRC is presented to assist those persons wishing to comment on the information collection. (Since the number of respondents has significantly increased during 1996 because of the inclusion of tribal casinos under the BSA, the estimates below are based on 1996 filings.)

Title: Currency Transaction Report by Casinos.

Form Number: IRS Form 8362.

OMB Number: 1506–0003.

Description of Respondents: All United States casinos, except those in Nevada. A separate form will be authorized for use by casinos in Nevada, which are subject to state imposed reporting and recordkeeping requirements, pursuant to 31 CFR 103.45.

Estimated Number of Respondents: 300.

Estimated Number of Annual Responses: 93,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 29,450 hours; recordkeeping burden 5 estimate = 7,750 hours. Estimated combined total of 37,200 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $744,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Revision and extension of a currently approved information collection.

Request for Comments

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Responses to the questions posed by this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: February 21, 1997

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–5305 Filed 3–3–97; 8:45 am]

BILLING CODE 4820–3–P

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants, Excise Taxes.

DATES: Written comments should be received on or before May 5, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Daniel Hiland, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants, Excise

Taxes OMB Number: 1512–0203

Recordkeeping Requirement ID Number: ATF REC 5110/06

Abstract: The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension

Affected Public: Business or other for-profit

Estimated Number of Respondents: 133

Estimated Time Per Respondent: 26 hours

Estimated Total Annual Burden Hours: 3458

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 24, 1997.

John W. Magaw,

Director.

[FR Doc. 97–5203 Filed 3–3–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before May 5, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8116.

SUPPLEMENTARY INFORMATION:

Title: Formula For Distilled Spirits Under the Federal Alcohol Administration Act.

OMB Number: 1512–0204.

Form Number: ATF F 5110.38.

Abstract: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made and restrictions to the label and/or manufacturing process. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 25, 1997.

John W. Magaw,

Director.

[FR Doc. 97–5205 Filed 3–3–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Transfer of Spirits and/or Denatured Spirits in Bond.

DATES: Written comments should be received on or before May 5, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Number: 1512–0191.

Form Number: ATF F 5100.16.

Abstract: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond. Records are kept as long as the approved application remains in effect.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 300.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 24, 1997.

John W. Magaw,

Director.

[FR Doc. 97–5206 Filed 3–3–97; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Tuesday
March 4, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101, 161, and 501

Food Labeling: Net Quantity of Contents; Compliance; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 161, and 501

[Docket No. 92P–0441]

Food Labeling; Net Quantity of Contents; Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its human and animal food labeling regulations that pertain to declarations of net quantity of contents on food packages. This action would establish specific procedures for checking conformance to net contents labeling requirements nationwide, and provide consumers with information that accurately reflects the actual contents of the package. These procedures include analytical methods for evaluating declarations in terms of mass or weight, volume, and count. FDA is also proposing to require that food packed in a pressurized container bear a declaration of the net mass or weight of the contents expelled when the instructions for use are followed, and to clarify when net content declarations expressed in terms of mass or weight are to be based on the contents without the packing medium (i.e., drained weight). Further, the agency is proposing to revise the standard of identity for fresh oysters. This proposal is based on petitions submitted by the National Conference on Weights and Measures (NCWM) and on comments that FDA received on one of these petitions.

DATES: Submit written comments by June 2, 1997. Submit written comments on the information collection requirements by April 3, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background

A. *General*

Since the earliest days that it applied to food, Federal law has required that the label of food in package form bear an accurate statement of the quantity of the contents of the package. On March 3, 1913, an amendment to the Food and Drugs Act of 1906 required that statements be accurate, but it provided that ''reasonable variations shall be permitted, * * * by rules and regulations'' (37 Stat. 732). Under this provision, FDA adopted regulations in 1914 that stated:

(i) The following tolerances and variances from the quantity of the contents marked on the package shall be allowed:

(1) Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing conducted in compliance with good commercial practice.

* * * * *

(3) Discrepancies in weight or measure due exclusively to differences in atmospheric conditions in various places, and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water.

Discrepancies under classes (1) * * * of this paragraph shall be as often above as below the marked quantity. The reasonableness of discrepancies under class (3) of this paragraph will be determined on the facts in each case.

(Regulation 29(I) of the Rules and Regulations for the Enforcement of the Food and Drugs Act; see Food Inspection Decision No. 154, Regulation of Marking the Quantity of Food in Package Form, May 11, 1914)

When Congress passed the Federal Food, Drug, and Cosmetic Act (the act) in 1938, Congress retained much of the earlier language concerning reasonable variations. Section 403(e)(2) of the act (21 U.S.C. 343(e)(2)) states that a food shall be deemed to be misbranded if the package does not bear a label containing ''an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that under clause (2) of this paragraph reasonable variations shall be permitted * * *.''

Under this provision, FDA's current labeling regulations in parts 101 (for human food) and 501 (for animal food) (21 CFR parts 101 and 501), specifically §§ 101.105 (a) and (q), and 501.105 (a) and (q) state:

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents. This shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure. The statement shall be in terms of fluid measure if the food is liquid, or in terms of weight if the food is solid, semisolid, or viscous, or a mixture of solid and liquid; except that such statement may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity that is customarily sold by dry measure. * * *

* * * * * * *

(q) The declaration of net quantity of contents shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated

quantity of contents shall not be unreasonably large.

Although §§ 101.105(q) and 501.105(q) make it clear that FDA requires that firms include an accurate statement of the quantity of contents of the package, and that variations from the stated quantity not be unreasonably large, the regulations provide almost no guidance about what constitutes an ''accurate statement'' of quantity, or about what constitutes an ''unreasonably large'' variation. However, §§ 101.105(q) and 501.105(q) states that reasonable variations from moisture loss or gain, and unavoidable deviations in good manufacturing practice (GMP), will be recognized. These sections make it clear that an individual package need not contain exactly the amount of the product stated on the label.

To ensure that net weight label statements reflect the quantity of food in a package with appropriate accuracy, FDA conducts field examinations of packaged products and has provided its personnel with guidance on how to conduct these examinations (Sec. 562.300 Compliance Policy Guides Manual (CPG) 7120.19). FDA rarely, if ever, conducts field examinations at a retail store. Its investigators usually do field examinations at food storage warehouses or at manufacturing plants. Agency employees examine 48 individual packages (e.g., retail units) collected at random from the lot of the food product being inspected. When a field examination reveals that the quantity declared on the label does not accurately reflect the amount of the product present in the packages, a portion of the packages (a subsample) is reevaluated in agency laboratories. If the laboratory analysis confirms the finding of the field examination, and the average contents of the subsample is 1 percent or more short of the weight on the label (short weight), agency likely will consider regulatory action. The 1-percent guideline serves to focus the agency's limited resources on those instances in which the economic deception is significant. FDA has not provided guidance for assessing compliance for net contents declarations made in terms of volume or count.

B. Past Attempts to Define ''Reasonable Variations''

In 1980, to provide more specific guidance about what constitutes a reasonable variation, FDA proposed to revise its regulations concerning declarations of net quantity of contents on packages of human food (45 FR 53023, August 8, 1980) by doing the following:

(1) Deleting the general provisions in § 101.105(q) that provide for ''reasonable variations'' caused (a) by loss or gain of moisture during the course of good distribution practice or (b) by unavoidable deviations (other than those from moisture loss) in GMP, and

(2) Adding a new § 101.106 that would specify the amount of ''reasonable variation'' that would be permitted for: (a) Moisture loss in specific foods and (b) unavoidable deviations in all foods with declarations of quantity in terms of weight.

The attempt to provide this guidance did not prove practicable. Most of the 85 comments that FDA received on the proposal either disapproved of it or suggested major revisions. These comments were predominantly from industry and State and local governments. Many comments asserted that the proposed regulations were unnecessary because no chronic short weight problem with food commodities had existed for more than a decade. Some added that, without such a problem, it would be improper for FDA to revise existing regulations solely to help State and local regulators in making judgements about whether variations from stated net weight declarations were ''reasonable.''

Many industry comments contended that the specific provisions of proposed § 101.106 could not be practicably substituted for existing general provisions of § 101.105(q).

Some comments objected that, because the moisture loss provisions of proposed § 101.106 were limited to such a small number of food classes, an enormous economic burden would be placed on the affected industry. The comments stated that manufacturers of the large number of foods that were not yet included in § 101.106 would be forced to overfill food packages by approximately 9 percent until FDA revised § 101.106 to provide moisture loss tolerances for them. The comments advised that, in some cases, it would take several years to gather data to justify these revisions, and that, once the data were gathered, it could take several more years for FDA to issue the revisions. The comments maintained that overpacking during these time periods would have large economic consequences.

In addition, one comment suggested that any specific maximum moisture loss provisions might be taken by a dishonest manufacturer as a license to underfill down to the ''legal'' limit. Weights and measures officials would be unable to detect such intentional underfillings because local inspectors relying on the regulation would have to assume that a variation that was within the limit specified by the regulation was the result of moisture loss. The comment said that the violation could only be detected through laboratory analysis or by checking the product before it left the manufacturer's premises. The comment stated that the obvious losers in this situation would be the consumer and the honest packer who continued to deliver full value to the consumer.

Other comments objected that proposed § 101.106 was inadequate with respect to unavoidable deviations (other than those from moisture loss) that resulted even though GMP was followed. Some comments pointed out that none of these provisions concerned products whose declarations of quantity of contents were expressed in terms of volume or count. As a result, such products would be permitted no variation from their labeled declarations of net quantity of contents. The comments argued that such a situation would be clearly contrary to the intent of Congress.

Comments pointed out that the proposed unavoidable deviations provisions may also not be adequate for certain bakery products. For example, one comment contended that the net weight of yeast-leavened products is much more difficult to control than is the net weight of liquids and fine powders. The comment stated that bakers could comply with the proposed net weight provisions only with substantial overpacking and significant price increases.

Because FDA was concerned that there were significant problems with proposed § 101.106, and that this regulation could have considerable adverse economic impact on the affected industry, the agency did not issue a final rule in this matter. The agency withdrew the proposed rule on December 30, 1991 (56 FR 67440).

C. The Basis for Preemption

Section 403A of the act (21 U.S.C. 343–1) provides that State food labeling requirements are preempted when they are the type required by section 403 (b), (c), (d), (e), (f), (h), (i)(1), (i)(2), (k), (q), and (r) of the act but are not identical to those requirements. It also preempts any requirement for a food that is the subject of a food standard of identity established under section 401 of the act (21 U.S.C. 341) that is not identical to such standard of identity or that is not identical to the requirement of section 403(g). FDA's regulations that pertain to net contents declarations of human and animal food, which are issued under

authority of section 403(e) of the act, are therefore preemptive of State and local laws and regulations that pertain to net contents declarations on human and animal food.

Thus, Congress decided that even though Federal requirements may preempt more restrictive State requirements in certain instances, the net benefits from national uniformity in these aspects of food labeling outweigh any loss in consumer protection that may occur as a result.

However, Congress also provided in section 403A(b) of the act that States may petition for an exemption from preemption, and that FDA may initiate rulemaking to grant such an exemption, where the State rule:

(1) Would not cause any food to be in violation of any applicable requirement under Federal law,

(2) Would not unduly burden interstate commerce, and

(3) Is designed to address a particular need for information which need is not met by the requirements of the sections referred to in subsection (a).

In the Federal Register of January 6, 1993 (58 FR 2462), the agency issued final regulations that set out the procedures for the submission, and for agency review, of petitions for exemption from preemption, and the information that the petitioner should supply. Section 100.1 sets forth the requirements that a State petition must meet to justify an exemption from preemption.

D. The Impact of Preemption on Net Contents Declarations

FDA's regulations that pertain to net contents declarations on human and animal foods are very general, and typically, as stated above, the agency's enforcement of these regulations takes place at the point of distribution or manufacture. FDA's sampling approach, involving examination of 48 randomly selected packages for each sample, often cannot be used in retail stores, where an inspection lot [1] may contain less than 48 packages. State and local regulatory agencies, unlike FDA, focus their enforcement efforts on retail stores. To facilitate retail level inspections, they may have adopted specific regulations and policies that differ from FDA's. These differences include sampling procedures that are more suitable to retail inspection.

For example, to determine whether net contents declarations are sufficiently accurate, most State and local agencies use a guide that is published by the National Institute of Standards and Technology (NIST). NIST is charged by Congress with primary responsibility in matters concerning weights and measures. It maintains standard units of weight and measure that serve as authoritative references for the Federal Government.

The NIST guide that is used by State and local agencies is referred to as ''NBS Handbook 133—Third Edition'' and is entitled ''Checking the Net Contents of Packaged Goods'' (Handbook 133) (Ref. 1). NIST has published four supplements to this guide. With passage of the 1990 amendments, many State and local agencies have grown concerned that some courts may rule that they are preempted from following some or all of their enforcement procedures for net contents declarations because Handbook 133 is not part of the regulations that FDA has adopted to implement section 403(e) of the act.

E. The Need for Consistent Test Procedures for Human and Animal Food

Historically, FDA has regulated the labeling of food intended for animals and of food intended for humans similarly when and where appropriate. For example, current animal food labeling regulations regarding the statement of identity, declaration of net contents, listing of ingredients, and declaration of name and address of manufacturer, packer, or distributor are identical to those for food for human consumption with only minor exceptions. This consistency in approach reflects the act but also is an attempt to provide consumers with equivalent labeling information on human and animal food. It also provides one standard for the feed/food industry and a common basis for the Government to conduct its inspections. FDA is not aware of any basis for deviating from this approach with respect to declarations of net quantity of contents.

II. The NCWM Petition for Exemption From Preemption

A. The Contents of Petition

On November 9, 1992, NCWM submitted a petition (Docket No. 92P–0441) (the 1992 NCWM petition) on behalf of officials representing most of its State regulatory agency membership. The petition requested that FDA grant to those State and local governments that use Handbook 133 an exemption from Federal preemption for the net contents declarations provisions in sections 403(e)(2), 502(b)(2), and 602(b)(2) of the act (21 U.S.C. 343(e)(2), 352(b)(2), and 362(b)(2)) of the act for food, drugs, and cosmetics. NCWM is a voluntary standards-writing body whose membership includes State and local weights and measures officials, and Federal Government, industry, and consumer representatives. NCWM is also an internationally recognized forum for establishing uniformity in weights and measures laws, regulations, and procedures for testing the accuracy of net contents declarations.

Handbook 133 contains procedures, using statistical sampling techniques, for determining whether packages of a wide variety of commodities conform to legal requirements for net contents declarations. NCWM stated that packaged products must meet two basic requirements under Handbook 133:

(1) The average quantity of contents of the packages in a lot, shipment, or delivery must equal or exceed the quantity printed on the label. The sampling plans and random sample selection criteria used to determine the average quantity of contents are based on practical sampling procedures that are similar to those used in quality control programs.

(2) The variation of individual package contents from the labeled quantity must not be ''unreasonably'' large. ''Unreasonably'' large variations are identified through use of values that Handbook 133 refers to as maximum allowable variations (MAV's). The MAV's cited in Handbook 133 are those values below which errors are ''unreasonable.'' MAV's are based on field studies of actual variability in packaging plants, warehouses, and retail outlets. Product samples may not have more than a permitted number of packages (based on the number of packages in the sample) with net contents deviations below the labeled contents that are more than the MAV's. MAV's apply only to shortages in package contents.

NCWM advised that 47 States use Handbook 133 to conduct net contents inspections of packaged goods. NCWM contended that the requested exemption would achieve, to the maximum extent possible, national standardization in net contents inspection procedures. It asserted that manufacturers, packagers, and consumers need the protection that can be provided by the inspection programs conducted by State and local inspectors using Handbook 133. NCWM advised that industry support for

[1] ''Inspection lot,'' for purposes of this document, means the collection of packages from which the sample is collected that consists of the same food, with the same label (but not necessarily the same production lot code or, in the case of random packages, the same actual quantity), and from the same packer.

Handbook 133 has been ''overwhelming.''

NCWM claimed that, because of the number of States that use Handbook 133, there is already considerable uniformity among the States. It also stated that procedures in Handbook 133 have not, and will not, cause any food to be in violation of FDA requirements. NCWM asserted that the use of Handbook 133 in State and local enforcement programs provides legitimate and specific protection for consumers in areas where FDA resources and activities have historically been limited; that Handbook 133 provides specific MAV's and testing procedures that are not set by Federal law; and that Handbook 133 provides clear and uniform notice to packers, wholesalers, and retailers of net weight compliance procedures and requirements.

Therefore, according to NCWM, no unreasonable burden on interstate commerce exists under the current system, and no burden, and no significant economic impact, would result if the exemption were granted. In addition, NCWM maintained that granting the requested exemption would be consistent with the intention of the 1990 amendments to provide national uniformity in certain aspects of food labels and labeling.

B. Comments on the NCWM Handbook 133 Petition

In response to the submission of the 1992 NCWM petition, the Grocery Manufacturers of America, Inc., the American Bakers Association, the American Frozen Food Institute, the International Dairy Foods Association, the National Food Processors Association, the National Pasta Association, and the Snack Food Association joined to form the Food Industry Weights and Measures Task Force (Task Force). The Task Force represents the majority of food manufacturers in the United States.

On behalf of the Task Force, GMA submitted a letter, dated June 4, 1993, commenting on the petition. The Task Force advised that it had previously submitted a letter to NCWM conveying its endorsement of NCWM's petition requesting the adoption of Handbook 133 for use as the standard throughout the United States to ensure uniformity in measurement procedures and quantity declarations for all food products. However, the Task Force pointed out that the 1992 NCWM petition had been filed before the January 6, 1993, regulation on exemptions from preemption was published (58 FR 2462 at 2468). The Task Force also expressed the opinion that the petition could not succeed because it does not meet all of the criteria specified in the final regulation.

The Task Force explained that the 1992 NCWM petition does not itemize or cite with required particularity each petitioning State's requirement that has been preempted. The Task Force stated that no more than 18 of the States that joined in the filing of the petition have enacted Handbook 133 as a final rule, and that the remainder of the States that joined in the filing of the petition have requirements that are either not described by the petition or are too informal to support a citation. The Task Force stated that these remaining States have legal requirements that are therefore different from Handbook 133 and that are most likely different from FDA's current net contents declaration requirements. The Task Force maintained that Handbook 133 is not functioning as a nationally uniform standard, and that the requirements of the petitioners are so disparate and undetermined that a blanket exemption would be virtually meaningless.

C. Denial of Exemption From Preemption

FDA is denying the petition for exemption of Handbook 133 from preemption because, as the Task Force pointed out, the 1992 NCWM petition was submitted before the publication of the January 6, 1993, final rule, and it does not satisfy all of the criteria specified in the final rule. The petition does not itemize or cite with required particularity each petitioning State's requirement that has been preempted. Furthermore, the petition does not address several of the issues that a petition is required to address under § 100.1, including: (1) Comparing the costs of compliance with the State and Federal requirements on the sale and the price of the food product in interstate commerce, and (2) the effect of the State requirement on the availability of the food product to consumers. The petition also does not include information showing that it is practical and feasible for producers of food products to comply with the State requirement.

Further, with respect to drugs and cosmetics, sections 502(b)(2) and 602(b)(2) of the act are not specifically preemptive of State and local law as is section 403(e) of the act. In addition, there are no provisions under the act for the agency to grant exemptions from preemption of the drug and cosmetic provisions.

III. Suggestions to the Agency About the Actions the Agency Should Take if It Denied the 1992 NCWM Petition

Although the Task Force recommended that FDA deny the 1992 NCWM petition, it stressed that there is a great need for a uniform, national standard for ensuring that net contents declarations are accurate. The Task Force also pointed out that a national standard could be most effectively provided through FDA regulations that would be preemptive of State and local regulations. The Task Force stressed that, without such a standard for determining compliance for net contents declarations, substantial burdens on interstate commerce occur because nonuniform labeling requirements necessitate either a multiplicity of labels or levels of fill to meet each of the different requirements, or the understating of the net contents declaration sufficiently to meet the ''most onerous State requirement.'' It stated that neither option serves the best interests of consumers or packagers.

The Task Force stated that there are major costs to industry, and ultimately to consumers, associated with the burdens on interstate commerce from overfilling to meet the most stringent requirements of State regulatory agencies. The Task Force pointed out that the agency's August 8, 1980, proposal (45 FR 53023 at 53026) advised that a nationwide survey had revealed that consumers routinely receive a 4-percent overfill for the average of all packaged foods purchased. That proposal also advised that the GMA had stated that a 4-percent overfill translates into a 4-percent cost increase, and that such a cost increase may involve added annual costs in the billions of dollars per year.

The Task Force requested that FDA incorporate a modified Handbook 133 into its regulations. The Task Force suggested a number of modifications that it believed should be included in any FDA-adopted version of Handbook 133. In subsequent comments on the 1992 NCWM petition in letters dated June 24, 1994, and September 15 and 22, 1994, the Task Force reconfirmed its belief that its suggested modifications should be adopted, and it suggested changes in FDA regulations to implement some of those modifications.

The 1992 NCWM petition itself asked that, if FDA decides to deny the requested exemption, the agency join with NCWM, NIST, and other Federal agencies to harmonize all net content requirements and test procedures using Handbook 133 as the basis for such work.

After filing its petition, NCWM also provided suggestions concerning harmonization. The NIST Handbook 133 Working Group (the Working Group), a committee of NCWM charged with the responsibility of recommending changes in Handbook 133, submitted a letter to FDA (Docket No. 92P–0441), dated November 15, 1993, commenting on the petition. The Working Group requested that FDA incorporate a modified Handbook 133 into the agency's regulations if the agency denies the petition. The Working Group suggested a number of modifications to Handbook 133 that it believed would help FDA to develop a revised version of Handbook 133. NCWM subsequently adopted the suggested modifications, and NIST published them in ''Supplement 4, October 1994'' (the 1994 Handbook). However, the agency points out that the 1994 Handbook has not yet been issued as a new edition of Handbook 133. The 1994 Handbook consists of Handbook 133 and the substantive changes provided in Supplement 4. The details of sampling, analytical, and compliance procedures of the 1994 Handbook are contained in both documents. Although the agency is denying the petition to adopt modified Handbook 133, FDA has considered Handbook 133 and the changes provided in Supplement 4 very carefully in developing this proposal.

IV. The Need for Rulemaking

Although many State and local regulatory agencies do have enforcement approaches patterned after Handbook 133, NIST has stressed that the approaches are not all uniform (Ref. 3). NIST pointed out that uniform enforcement approaches may be assured only where State and local regulatory agencies use the most current version of Handbook 133 (e.g., the 1994 Handbook). NIST advised, however, that some State and local regulatory agencies have not formally adopted the most current version of Handbook 133 and are using older versions. In addition, NIST advised, not all State and local agencies that use a particular version of Handbook 133 conform with its provisions. Further, as pointed out by the Task Force and as acknowledged in the 1992 NCWM petition, some State and local jurisdictions do not use Handbook 133 at all.

NIST pointed out the potential for dramatically increased overfilling costs without the agency formally adopting the most current version of Handbook 133 as a standard. NIST stated:

> Handbook 133 contains two widely varying approaches with differing statistical bases for determining whether contents declarations are sufficiently accurate. In Handbook 133, these approaches are designated as ''Category A'' and ''Category B'' approaches. Both approaches address the appropriate sample size corresponding to the size of the inspection lot, and the maximum number of packages permitted to exceed the MAV established for the package size that is being examined. However, for most inspection lots, especially the larger ones, sample sizes are larger under the ''Category A'' approach than under ''Category B.'' Also, only the ''Category A'' approach provides correction factors that must be used in a statistical evaluation of the analytical findings to provide assurance that the findings actually represent the fills that are present throughout the entire inspection lot. Under the ''Category B'' approach, the absence of the correction factors means that an inspection lot that is actually in compliance could be found violative 50 percent of the time. Under the ''Category A'' approach, the same lot is likely to be found violative only 3 percent of the time. (Ref. 3)

NIST advised that before the 1994 Handbook, it was common practice for State and local regulatory agencies to use the ''Category B'' approach because it is simpler to use and biased in favor of consumers rather than industry (Ref. 3). Because of concern about the large differences in the statistical bases between the ''Category A'' and ''Category B'' approaches, the 1994 Handbook provides that the ''Category A'' approach is to be used for all situations where regulatory action may result. The ''Category B'' approach is to be used only in meat and poultry plants that are subject to the jurisdiction of the U.S. Department of Agriculture (USDA).

However, NIST pointed out that the simplicity of the ''Category B'' approach provides strong incentive for regulatory agencies to continue using the ''Category B'' approach where they have not formally adopted the most current version of Handbook 133. Thus, different jurisdictions may still have significantly different enforcement approaches. Furthermore, because some State and local regulatory officials do not use the ''Category A'' approach, firms recognize that regulatory action may be taken against inspection lots that are actually in compliance. Manufacturers are, therefore, as a practical matter, forced to systematically and significantly overfill their packages.

Although FDA has no data concerning the extent of current overfilling, the survey that it cited in 1980 (45 FR at 53023 at 53026) supports the Task Force's contention that expenses associated with overfilling constitute a significant burden on interstate commerce. FDA notes that the same survey suggests that the amount spent on overfilling may be in the billions of dollars annually. These expenditures raise the price of the overfilled packages. Thus, if adopted, the uniform approach set out in this proposal should reduce the amount of overfilling and the increased prices associated with overfilling.

Furthermore, the Task Force pointed out that overfilling misleads consumers about the nutrient content in a serving of food. For example, the nutrition labeling information on a food package declares the nutrient profile of the food in terms of the number of servings present in a package. If a food package is overfilled, a serving of a food contains more nutrients (e.g., calories, fat, and cholesterol) than is stated on the label. Thus, a consumer attempting to reduce intake of certain nutrients for health reasons from an overfilled food package would not recognize that nutrient reductions are less than the consumer would expect.

Based on these factors, the 1992 NCWM petition and the comments on the 1992 NCWM petition, have convinced the agency that the diversity in approaches to enforcement of net contents declaration labeling requirements on foods among State and local regulatory agencies has created significant burdens on interstate commerce.

As pointed out in section I.C. of this document, Congress included preemption provisions in the 1990 amendments to provide national uniformity to facilitate interstate commerce. Although FDA has no authority to require State and local agencies to adopt specific procedures for enforcement of net contents declaration labeling requirements, the preemptive effect of the provisions that FDA adopts will mean that, to the extent that such agencies adopt requirements that relate to net contents declarations, they will have to adopt requirements that are consistent with FDA's requirements. Given this fact, to the extent that FDA identifies ''reasonable variations'' in its regulations, the affected industry will know when net content deviations are likely to be considered violative. Such knowledge should help firms to reduce overfilling of packages and should facilitate interstate commerce by making the establishment of uniform target fill levels practicable for all package sizes.

FDA's current approach to declarations of net quantity of contents of foods cannot practicably serve as a national standard, however. Rather than having regulations that identify ''reasonable variations'' for a variety of situations, FDA relies on a case-by-case approach for determining whether variations are reasonable. With respect

to assessments concerning whether an inspection lot conforms to net contents labeling provisions of the act, FDA looks at analytical findings of each sample and decides whether the statistical characteristics of those findings support a conclusion that the lot is violative. The agency does not have an established procedure for adjusting net contents findings with correction factors such as those in the ''Category A'' approach. Admittedly, the guidance in FDA's CPG 7120.19 (which directs FDA field personnel to consider regulatory action where the average contents of the subsamples is 1 percent or more under fill, i.e., less than the declared net quantity of contents) may serve to minimize the impact of the lack of such correction factors, but, as mentioned previously in this document, 1-percent criterion in the CPG was intended only to conserve agency resources.

Without an established procedure for adjusting net contents findings with correction factors, a case-by-case approach would not be likely to produce national uniformity because each State and local enforcement agency could set its own policy for determining when variations are reasonable. For example, different statistical approaches might be used for concluding that a lot is violative. There would be a significant potential for such a situation happening with the large number of State and local regulatory agencies in the United States. Moreover, as mentioned previously in this document, FDA's sampling approach cannot be used in retail stores, where inspection lots often consist of less than 48 units. In view of these facts, FDA finds that there is a need to initiate rulemaking proceedings on net contents determinations.

FDA recognizes that the regulation that it is proposing is prescriptive and complex. Normally, in this time of Government reinvention, this is not the type of regulation that FDA would be proposing. However, FDA tentatively finds that to establish a uniform national system under which manufacturers can be assured net quantity of contents will be tested the same way regardless of the jurisdiction, it must adopt detailed regulations. FDA welcomes comment on this tentative judgment.

One alternative that the agency considered was to issue the detailed provisions that are contained in the proposed regulations as guidance rather than as regulations. FDA has tentatively concluded, however, that guidance would not be effective to correct the problems that both industry and NCWM have asked FDA to address. Section 403A(a)(2) of the act (21 U.S.C. 343–1(a)(2)) states that no State or political subdivision of a State may establish a requirement of the type required by section 403(c) of the act that is not identical to the requirement of such section. Thus, apparently, in the absence of a Federal regulation, State and local jurisdictions could not adopt regulations, even regulations that reflect Federal guidance. Consequently, the effect of an FDA decision to rely on guidance rather than regulations would be to continue the national, State, and local systems that rely on case-by-case determinations. Because such a system would deprive consumers and industry of the benefits listed above, FDA has tentatively rejected this alternative. However, the agency invites comments on the appropriateness of this choice.

V. The Foundation of the New Proposed Rule

During its review of the 1994 Handbook, FDA tentatively concluded that NCWM is correct. If the 1994 Handbook is appropriately modified, it can serve as a national standard for determining the accuracy of net contents declarations. The statistical base of the procedures for determining compliance in this handbook is such that there should be little need for unnecessary overfilling of packages to ensure compliance. Use of the detailed sampling, analytical, and compliance procedures in the 1994 Handbook can minimize case-by-case decisions affecting compliance testing and can provide a basis to make uniform guidance practicable. Further, the 1994 Handbook identifies ''reasonable variations'' for both average and individual fills, as well as some moisture loss variations. In addition, the 1994 Handbook has been developed by NCWM through a long-established process, spanning approximately 30 years, and it is based on a consensus of regulators, industry, and consumer advocates. All of the published editions of the NCWM Handbook have had histories of successful implementation. Because the 1994 Handbook has been developed through this consensus building process, FDA findsconsiderable merit in the suggestions by industry, NIST, and NCWM that FDA adopt, as part of its regulations, the testing procedures in the 1994 Handbook, with some appropriate revisions.

However, while the 1994 Handbook does contain many desirable features, there are some obstacles to the agency's incorporating the 1994 Handbook into its regulations. Much of the material in the 1994 Handbook is not necessary or appropriate for agency rules on net contents declarations on packaged food. For example, there are many methods of analysis in the 1994 Handbook for products that are not foods or that are not regulated by FDA. Further, there is considerable background information that would not need to be codified. Even if FDA were to adopt the 1994 Handbook with a number of exceptions for irrelevant provisions, the large quantity of material (more than 250 pages), and the long list of exceptions that the agency would have to include with such adoption could be very confusing to all affected parties. Thus, FDA finds that it is not practicable to adopt the 1994 Handbook in its entirety.

Nonetheless, many aspects of the 1994 Handbook can serve as the foundation for regulations on net quantity of contents. In view of the fact that the Handbook 133 portion of the 1994 Handbook is already a widely used national model, and that NIST was one of the primary authors of Handbook 133 and the 1994 Handbook, FDA tentatively concludes that it should use the 1994 Handbook as a starting point for its regulations. This approach was suggested by the Task Force when it requested that FDA incorporate Handbook 133 in a modified form into the agency's regulations. Therefore, FDA set out to craft a regulation based on the 1994 Handbook.

In developing specific provisions of the proposed regulations, FDA worked closely with NIST, as was suggested by the petition and comments on the petition. FDA used NIST as its primary technical resource because of the worldwide recognition of that agency's expertise in all issues concerning weights and measures. Also, NIST's involvement in developing Handbook 133 and the 1994 Handbook has made that agency uniquely qualified to help in FDA's review of the 1994 Handbook.

As mentioned in section III. of this document, NCWM requested that FDA include them in agency efforts to establish national uniformity in net contents requirements if the agency decided to deny the requested exemption. FDA did not grant this request, however, because of concerns that, given its diverse membership, NCWM participation might create procedural problems in developing this proposal. However, NIST is extremely active in NCWM. NIST's involvement in developing of this proposed rule, and the significant NCWM technical material in the 1994 Handbook, has minimized the significance of FDA's decision not to have NCWM participate.

VI. Provisions of the Proposed Rule

A. Existing Provisions

FDA examined its existing regulations that pertain to declarations of net contents for human and animal food in §§ 101.105 and 501.105 to identify all provisions that bear on the accuracy of measurements and to determine what revisions, if any, need to be made. The agency found that §§ 101.105(b)(2), (g), and (q) and 501.105(b)(2), (g), and (q) contain information that bears on the accuracy of measurements. The remaining paragraphs in §§ 101.105 and 501.105 cover a broad range of topics concerning declarations of net quantity of contents that are not relevant to the accuracy of measurements of content. For example, type size requirements for letters and numerals in declarations (§ 101.105(h)) and location requirements for such declarations (§ 101.105(f)) have no bearing on the accuracy of the quantity declaration.

Given the distinction between the provisions that bear on accuracy of quantity declarations and those that bear on how those declarations are to be presented, FDA has decided to move § 101.105(b)(2) and (g) into a new section. FDA is also redesignating § 101.105 as § 101.200 and moving it to a new subpart H of part 101. The proposed new section that FDA is creating out of § 101.105(b)(2) and (g), proposed § 101.201, will contain the other provisions that relate to the accuracy of net contents declarations in subpart H of part 101. The agency sees no reason, however, to repeat the same provisions in parts 101 and 501 when it may cross-reference them. Accordingly, with the exception of §§ 101.200 and 101.201, FDA is proposing to cross-reference the provisions in part 101 in part 501 (proposed § 501.105(g)).

In addition to redesignating certain provisions that had appeared in § 101.105, FDA is proposing to make a number of substantive changes in the provisions that it is redesignating. A description of these proposed changes follows.

1. Reference Temperatures

Liquid food products may be held for sale at room temperature or at other colder temperatures that refrigerate the products or cause them to be frozen. Sections 101.105(b)(2) and 501.105(b)(2) affect the accuracy of measurements by specifying the temperatures at which volume measurements of frozen, refrigerated, and other liquid foods are to be made to determine whether they meet the net quantity of contents requirements. These temperatures are to approximate the temperature at which the food is customarily sold. The temperature at which the volume of food is to be measured is referred to in this proposal as the ''reference temperature.''

The reference temperature affects measurement accuracy because the volume that is occupied by any food varies with the temperature of the product. Sections 101.105(b)(2) and 501.105(b)(2) and the 1994 Handbook contain reference temperatures for frozen, refrigerated, and other liquid foods. Although there is consistency between agency regulations and the 1994 Handbook for refrigerated foods and other foods, §§ 101.105(b)(2) and 501.105(b)(2) provide that statements of fluid measure for a frozen liquid food shall express the volume ''at the frozen temperature.'' However, the Handbook 133 portion of the 1994 Handbook contains a frozen food reference temperature of 0 °F (−17.8 °C). Unless FDA also establishes a specific reference temperature for frozen liquid food, considerable variation could occur in volumetric measurement for the same volume depending on the temperature of the product at the time that it is tested.

For example, it is possible to approximate the behavior of liquids with high water content by calculating the volumetric changes predicted for water: At −20 °C (−4 °F), the density of water is 0.993550 grams (g) per cubic centimeter, and at 0 °C (+32 °F), the density of water is 0.9998425 g per cubic centimeter. Thus, 12 fluid ounces of frozen orange juice at 0 °C (+32 °F) would occupy 354.9 millimeters (mL), but at −20 °C (−4 °F), it would occupy 357.1 mL, a difference of 0.6 percent. Since defrosting freezers that cycle between −10 and +20 °F are used routinely at retail outlets to store and display frozen foods (Ref. 3), it is important to define a reference temperature for frozen liquids to ensure that there is consistency and predictability in the temperature at which such products are tested. FDA is therefore proposing to establish a reference temperature for frozen food. For consistency with reference temperatures in the agency's ongoing metric labeling rulemaking proceedings (see 58 FR 29716 May 21, 1993, and 58 FR 67444 December 21, 1993), the agency has rounded the metric temperature to the nearest whole number, −18 °C, and placed it before 0 °F in proposed § 101.201(a)(2)(i) and proposed § 501.105(b)(2)(i).

2. Accuracy Within Reasonable Variations

As mentioned previously in this section of the document, paragraphs (g) and (q) of §§ 101.105 and 501.105 both relate to accuracy of net quantity declarations. These paragraphs are somewhat redundant in that they both require that the net contents declaration be accurate. However, while paragraph (g) requires that the declaration reveal the quantity of food in the package exclusive of wrappers and other material packed therewith, paragraph (q) provides that the net contents of an individual package need not precisely meet the labeled declaration. It recognizes that reasonable variations may be caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in GMP. Paragraph (q) also requires, however, that such variations not be unreasonably large.

Given the basic redundancy in these two paragraphs, FDA has tentatively decided to combine them as §§ 101.201(b) and 501.105(g) and to remove paragraph (q) in both human and animal food regulations. The proposed paragraph, however, carries forward the two basic aspects of the current provisions. It requires that the declaration of net quantity of contents provide an accurate statement of the quantity of contents of the package and defines an accurate statement as one that conforms to all requirements for the declaration set forth in subpart H. It also recognizes that there may be reasonable variations in the net content declarations and refers to §§ 101.240, 101.245, and 101.250 to define what constitutes a ''reasonable variation.''

Although the proposed provisions of subpart H establish the procedures and analytical methodology that will, if finalized, be used in enforcement decisions by Federal, State, and local regulatory agencies, manufacturers will be free to use any alternate procedures and analytical methodology that they find appropriate. However, FDA strongly recommends that manufacturers use the same procedures and analytical methodology that appear in subpart H. Where firms elect to adopt a different approach than the recommended approach, firms would be advised to compare their approach to that in subpart H to ensure that their approach produces similar results.

3. Pressurized Containers

Section 101.105(g) addresses what the net contents declarations on pressurized containers is to present. It states, in part:

* * * In the case of foods packed in containers designed to deliver the food under pressure, the declaration shall state the net quantity of the contents that will be expelled when the instructions for use as shown on

the container are followed. The propellant is included in the net quantity declaration.

Paragraph (g) does not address, however, whether the declaration is to be in terms of solid or fluid measure when the product is expelled as a gaseous suspension of fine solid or liquid particles.

Aerosol-packaged products and similar pressurized products are often dispensed as suspensions. Sections §§ 101.105(a) and 501.105(a) provide that net contents declarations for food products are to be in terms of fluid measure if the product is liquid, and in terms of weight if the product is solid, semisolid, or viscous or a mixture of solid and liquid. The agency has interpreted § 101.105(a) with respect to aerosols in the Fair Packaging and Labeling Manual Guide 7563.7 (Guide 7563.7), which states:

> We have not objected to the use of units of volume to declare the net contents of aerosol preparations that would be liquid if not combined with the propellant, and a net weight statement in avoirdupois units for products that would be solids if not combined with a propellant.

While this position is consistent with § 101.105(a), it is not consistent with the Handbook 133 portion of the 1994 Handbook, which requires that such net contents declarations be expressed in terms of weight. The inconsistency between Guide 7563.7 and Handbook 133 was brought to the agency's attention a number of years ago when FDA received a petition from NCWM (Docket No. 90P–0180) that requested, in part, that FDA amend its regulations for foods to require that declarations of quantity of contents on aerosol-packaged products and on similar pressurized packages be expressed in terms of net mass or weight.

NCWM pointed out in that petition that State and local regulatory agencies have regulated these products on the basis of net mass or weight for many years. NCWM explained that, for aerosol and other pressurized packages, an expression of quantity in terms of mass or weight is the only net contents declaration that could practicably be checked by regulatory inspection officials and used successfully in the packer's filling operation. NCWM also pointed out that it could be difficult for consumers to make value comparisons between similar products where some are labeled in terms of volume, and some are labeled in terms of mass or weight. Further, NCWM advised that because State and local officials have long required net contents declarations on self-pressurized containers to be in terms of net mass or weight, such declarations have become an industry-wide practice. Consistent with State and local requirements, the Handbook 133 portion of the 1994 Handbook provides for net contents declarations on such products only in terms of mass or weight, with the expelled propellant being included in the net contents declaration.

Based on the arguments set forth in the 1992 NCWM petition, the fact that FDA knows of no human or animal aerosol foods with net contents declarations that are expressed in terms of volume, and the fact that FDA is using the 1994 Handbook as a starting point for its regulations, the agency has been persuaded to propose that net contents declarations on aerosol foods be expressed in terms of mass or weight. This approach will apparently cause the least amount of disruption in labeling, while removing a significant inconsistency between the agency and State and local requirements. Accordingly, the agency is proposing to redesignate § 101.105(a) as § 101.200(a) and revise newly redesignated § 101.200(a) and revise § 501.105(a) to provide that a food packaged in a self-pressurized container shall bear a net contents declaration in terms of the mass or weight of the food and the propellant that will be expelled when the instructions for use as shown on the container are followed.

4. Mass or Weight of the Packing Medium

Section 101.105 does not address when net contents declarations that are expressed in terms of mass or weight are to be declared as the mass or weight of the contents without the packing medium, which is commonly referred to as the ''drained mass or weight'' or the ''drained solids.'' The agency tentatively concludes that new § 101.200 should address this matter.

For many years, FDA has advised firms that the net contents declaration should include the packing medium if it is generally consumed as part of the food. Conversely, where solid foods are packed in a salt brine or other medium that is always, or almost always, discarded before serving, the agency has expected that the label would disclose the drained weight. For example, FDA's Fair Packaging and Labeling Manual Guide 7699.2 states that the appropriate net contents declarations for canned artichokes, canned clams, canned mushrooms, green olives in brine, and canned wet-pack shrimp are in terms of drained weight. However, the agency's case-by-case approach to determining when a packing medium is always or almost always discarded before serving would be difficult to implement uniformly if many different regulatory agencies are making such assessments.

The congressional mandate for national uniformity suggests that FDA should provide more specific direction in this matter. However, FDA notes that it has already dealt with the issue of when a food should be declared in terms of its drained weight in its regulation on serving sizes (§ 101.12). The agency's nutrition labeling requirements provide for declaration of nutrient information in terms of the serving size based on the reference amounts customarily consumed as set forth in § 101.12, and that section specifically provides for cases where the reference amounts are in terms of drained solids.

Thus, FDA no longer has to make case-by-case assessments about whether the packing medium is always or almost always discarded before serving. Instead, the agency can now refer to § 101.12 in determining whether net contents declarations must include the packing medium. Therefore, FDA is proposing to require in § 101.200(a) that, except where the reference amount customarily consumed per eating occasion is in terms of drained solids in accordance with § 101.12, a food that is packed or canned in liquid, and that is required to bear a net contents declaration in terms of weight, shall bear a declaration expressed in terms of the total net contents including the liquid.

FDA points out that, for many years, it has had a policy of permitting both drained weight and net weight to be stated on the principal display panel (PDP) of a food label. However, some State regulatory agencies prohibit both drained weight and net weight from appearing on the PDP of a label because they consider one of the weight declarations to be in conflict with section 4(b) of the Fair Packaging and Labeling Act (FPLA), which prohibits qualifying words or phrases from appearing with the required net contents declaration. FDA advises that it does not believe that its policy in this regard conflicts in any way with section 4(b) of the FPLA.

Although neither the language of the FPLA nor the regulations established thereunder provide clear guidance, the legislative history of the FPLA does. The May 25, 1966, Senate Report No. 1186, which addressed the meaning of the prohibition of supplemental statements, states:

> Subsection 4(b) prohibits the qualification of the separate net quantity statement by any modifying words or phrases. However, a supplemental statement of the net quantity of

contents set apart from the separate net quantity of contents, required by the bill, may be modified by nondeceptive words or phrases, so long as such words or phrases do not tend to exaggerate the amount of the commodity contained in the package. For example, where a package contains a separate net quantity statement in conformity with promulgated regulations, such as ''6 oz. net weight,'' the package could also contain in a supplemental statement, apart from the required net quantity statement, the phrase ''6 oz. of fast acting X detergent'' but could not contain the statement ''6 jumbo oz. of X detergent'' at any place on the package* * *.

From the above quote, it is obvious that the required declaration of net quantity may not contain statements designed to imply that one product is different in quantity from others declaring the same net contents. It is also obvious that Congress wanted the required declaration to be separate from supplemental statements designed to promote product sales. FDA has a regulation, § 101.105(o) (which would be redesignated as § 101.200(o)), that is intended to ensure that such separation exists by permitting supplementary net quantity statements on label panels other than the PDP. However, there is no indication in Senate Report No. 1186, or elsewhere in the legislative history of the FPLA, that congressional concern about a ''supplementary statement'' was intended to encompass other forms of nonmisleading information about the quantity of contents than the one required. To the contrary, the broad congressional policy declared in section 2 of the FPLA states: ''Packages and labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons'' (15 U.S.C. 1451). Declaration of a statement of net quantity of contents in terms of both drained weight and net weight would not be inconsistent with this policy because such declarations advise consumers of the amount of food and the accompanying packing medium, thereby assisting purchasing decisions.

Although the agency does not consider it necessary to codify the present policy of permitting both drained weight and net weight to be declared on the PDP of a food label, FDA solicits comments on whether it should codify this policy into its regulations.

B. New Provisions

In response to suggestions from State and local regulatory agencies and the affected industry, FDA has tentatively determined that, for national uniformity, it should adopt new regulations that set out the specific details of the techniques and methods that it will use in assessing the accuracy of net contents declarations. The agency turns now to those regulations.

1. Definitions

The 1994 Handbook, Appendix C has a glossary that contains almost 100 different terms and their definitions to help users follow its requirements. The 1994 Handbook also contains a number of additional definitions in various locations throughout the handbook. With one exception, which is discussed below, the definitions used in the 1994 Handbook have been accepted and used by regulated industry and regulatory agencies for a number of years.

FDA tentatively finds that any regulations that it adopts based on this proposal will profit if they include a similar set of definitions. The definitions will not only make the regulations understandable, but they will help to foster consistency with the 1994 Handbook. FDA is therefore proposing, in § 101.205, to define a number of terms that it has used in the proposed regulations. FDA has drawn heavily on the 1994 Handbook for these definitions because of the long history embodied in the 1994 Handbook, and because the definitions were arrived at by NCWM after consideration of the views of both industry and regulatory agencies.

The agency is not, however, proposing to define all of the terms defined in the 1994 Handbook because some of the terms in the 1994 Handbook pertain to products that FDA does not regulate.

Where FDA is including terms in proposed § 101.205 that are defined in the 1994 Handbook, it is, for the most part, incorporating the 1994 Handbook definitions. The agency has, however, made minor changes in the definitions for clarity.

A few terms that are used in the regulations, however, have either not been defined in the 1994 Handbook or are defined in the 1994 Handbook in a way that is not fully satisfactory. A discussion of these terms, and of the definitions that FDA is proposing for them, follows.

a. *Sample standard deviation.* In § 101.205(o), the agency is proposing to adopt the following commonly recognized definition for ''sample standard deviation:''

Sample Standard Deviation (s) means a statistic used as a measure of dispersion (i.e., differences of individual values from the mean) in a sample. It is calculated as follows:

$s = (\Sigma(xi - x)2/(n - 1))^{1/2}$ or equivalently (and primarily for calculations without a computer),

$s = ((\Sigma xi^2 - (\Sigma x_i)^2/n)/(n - 1))^{1/2}$.

Where:

Σ means ''the sum of,''

xi means the ith individual package error,

n means the sample size, and

x means the average of the package errors, that is, the sum of the package errors divided by the number of packages in the sample.

This definition is a commonly recognized definition for ''sample standard deviation'' (Ref. 3).

FDA points out that it is proposing the use of this definition for samples collected using either of the random selection approaches set forth in the 1994 Handbook. The 1994 Handbook provides for the collection of a sample through either: (1) A single-stage approach of randomly selecting the individual packages directly from the lot, or (2) a multistage approach of first randomly selecting the larger storage units (e.g., cartons or pallets), followed by random selection of the individual packages. While the proposed definition of ''sample standard deviation'' is mathematically fully correct only where the single-stage approach is used, FDA has tentatively decided that the definition can be used when a multistage approach is used for three reasons. First, NIST has recommended its use in this circumstance (Ref. 3). Second, its use will minimize the complexity of these regulations. Third, NIST advised (Ref. 3) that any errors introduced by using this definition with a sample collected using a multistage approach will not be significant.

The single-stage approach is generally used at retail locations on smaller lots of packages that are not in cartons or on pallets. The multistage approach is generally used for larger lots, such as those found in food storage warehouses (e.g., in locations where foods are found in shipping cases, containing 12, 24, or 48 individual packages, which are typically stored on several different pallets). In the first stage of a multistage sampling approach, an official randomly selects one or more pallets from all of the pallets available from which to collect samples. In the second stage, the official randomly selects one or more shipping cases from the selected pallets. Finally, in the third stage the official opens the shipping cases and randomly selects individual packages from the shipping cases for use as the sample packages in determining lot compliance.

For a multistage approach, a more complicated calculation of the standard

deviation than the one that FDA is proposing is theoretically appropriate. For multistage samples, the average of the package errors within each of the larger storage units can be used to determine the sample standard deviation rather than the package errors for each package regardless of the storage unit in which the packages are contained.

Nonetheless, FDA is proposing to provide that the more simple approach to computing sample standard deviation be used. NIST recommended that FDA not increase the level of complexity for regulatory officials in calculating the sample standard deviation (Ref. 3). NIST said that any increase in complexity would significantly increase the risk that regulatory officials would make mistakes in classifying an inspection lot as violative, and that the difference in the results obtained using the two methods would be minor. Therefore, NIST stated, it would not justify the increased time and costs related to net quantity of contents inspections if the more complex calculation were required. NIST also stated that the harm that could result from the potential mistakes caused by the increased complexity of the calculation could far exceed any benefits of calculating standard deviation in a more theoretically appropriate manner. Thus, NIST recommended that FDA require the use of the less complex approach for determining sample standard deviation. It pointed out that this approach is normally used in the food industry for statistical process quantity control.

FDA agrees with NIST and is proposing in § 101.205(p) to define ''sample standard deviation'' based on the less complex approach suggested by NIST. FDA requests comments on the adequacy of this proposed definition.

b. *Gravimetric test procedure.* FDA is proposing in § 101.205(c) to define the term ''gravimetric test procedure'' as an analytical procedure that involves measurement by mass or weight. The proposed regulations contain a number of different gravimetric procedures, and the proposed definition should simplify the description of these procedures by eliminating the need to include a lengthy discussion of measurement by mass or weight. FDA requests comments on whether there are any problems created by this approach.

c. *Dry animal food.* In § 501.105(u), FDA is proposing that the term ''dry animal food'' mean animal food packaged in paperboard boxes or kraft paper bags that has 13 percent or less moisture at time of pack. This definition is derived from a definition of the term ''Dry pet food'' in the 1994 Handbook[2] that serves to designate a class of food entitled to certain adjustments for moisture loss that are discussed subsequently in this preamble. As proposed, FDA's definition is the same as that in the 1994 Handbook except that the agency is proposing to use the term to encompass all animal food rather than only food used for pets. The 1994 Handbook does not contain any indication as to what it precisely means by the term ''pet.'' In view of the lack of such specificity, and the fact that FDA knows of no reason to differentiate between pet and non-pet animal food, the agency tentatively concludes that the definition can apply to all animal food.

According to NIST (Ref. 3), the 13-percent moisture content limitation in the proposed definition was developed in cooperation with the Pet Food Institute, a trade association that represents a majority of the manufacturers of pet foods. NIST stated that NCWM developed the limitation for dry animal food based on moisture loss studies that were conducted using products from several manufacturers. The laboratory tests conducted as part of those studies revealed that the maximum moisture level of the products used in the field studies was less than 13 percent. NIST advised that it was not aware of any concerns on the part of packers over the NCWM definition because it is only intended to be used to identify the types of dry animal foods subject to moisture loss and serves no other purpose. Most packers are required under many state animal food laws and regulations to provide moisture content information in the guaranteed analysis displays on pet food packages. Therefore, FDA is proposing to adopt this definition.

2. Sample Collection

The 1994 Handbook provides that the ''Category A'' approach is to be used on FDA regulated commodities for determining whether net contents declarations are sufficiently accurate. The ''Category A'' approach addresses, in part, the sample collection procedure to be used for evaluation of the accuracy of the net contents label declaration. For this approach, the 1994 Handbook provides that the size of the sample taken depends on the size of the lots being sampled.[3] The handbook provides for four basic sample sizes. Where the lots consist of less than 12 packages, all of the packages in the lot are included in the sample. Where there are 12 to 250 packages, 12 packages are to be taken as the sample. Where there are 251 to 3,200 packages, 24 packages are to be taken as the sample. Where there are more than 3,200 packages, 48 packages are to be taken as the sample. All packages in the sample are collected through random selection procedures that are discussed subsequently in this preamble.

NIST pointed out in its letter to FDA that the sample collection procedure under the ''Category A'' approach can be readily used for both retail and wholesale inspections (Ref. 3). NIST advised that sample collection under this approach does not make unreasonable demands on inspection time through overly large sample sizes. Furthermore, NIST pointed out that the ''Category A'' approach was developed from a consensus position of the NCWM after consideration of the views of both regulators and the regulated industry. NIST stressed that the ''Category A'' sample collection procedure is easy to use and appropriate for use in verifying the net quantity of contents of packaged food at all levels of wholesale and retail trade.

FDA tentatively agrees with NIST's assessment of the ''Category A'' sample collection procedure in the 1994 Handbook. The practicability of implementation of this procedure, coupled with the consensus agreement on the approach, have led FDA to tentatively conclude that this procedure represents a reasonable approach to sampling. The agency is therefore proposing to adopt, in § 101.210, the Category A sample collection procedure from the 1994 Handbook.

3. Measuring Equipment

One of the fundamental aspects of any approach to ensuring that net contents declarations on food packages are accurate is to ensure that accurate measurements are made. To this end, FDA is proposing to address: (1) Selection of appropriate measuring equipment and (2) standardization of that equipment to ensure that it is accurate. FDA's hope is that these provisions will allow all affected parties to have confidence in the measurements made under the standard. FDA expects that this confidence will mean that regulatory agencies will be comfortable in embracing and implementing the approach set out in these regulations, and that the regulated industry will be able to establish uniform practicable target fill levels for all package sizes, regardless of the ultimate distribution location, with confidence that the fill

[2] The 1994 Handbook's definition appears in Table 3–3 on page B–17 of the Handbook 133 portion, of the 1994 Handbook.

[3] See Chapter 2 and Table 2–1 in Appendix B of the Handbook 133 portion of the 1994 Handbook.

levels will meet the local regulatory standards. With uniform target fill levels, firms should be able to significantly reduce overfilling of packages, thereby reducing production costs and providing consumers with more accurate nutritional information.

FDA notes that the 1994 Handbook contains procedures for both the selection and standardization of measuring equipment. These procedures pertain primarily to balances and volumetric measures (i.e., measuring devices for use in the measurement of volumes of liquids, such as standard measuring flasks, graduates, and cylinders (see Chapters 2 through 5 of the 1994 Handbook)). Many of these procedures (or ''tolerances'' as the 1994 Handbook often refers to them) are incorporated into the 1994 Handbook through reference to the NIST Handbook 44 (Ref. 4) (referred to subsequently as ''Handbook 44''). Handbook 44 is widely recognized as the national standard for accuracy requirements for scales and balances (Ref. 3). In addition, both the 1994 Handbook and Handbook 44 contain instructions (or ''test procedures'' as the 1994 Handbook refers to them) for the calibration of equipment to ensure that its accuracy is consistent with measurement standards maintained by NIST.

FDA sees considerable merit in the 1994 Handbook procedures for selection and standardization of measuring equipment. The agency has therefore, with a very few exceptions (which are discussed below where relevant to a particular type of equipment), used these procedures as the basis for the equipment requirements in these proposed regulations. A discussion of these proposed requirements follows:

a. *Equipment selection*—i. *Thermometers.* In § 101.215(a), FDA is proposing to require that any thermometer used in measuring net contents (e.g., to bring a product to an appropriate reference temperature before measuring the volume) have graduations no larger than 1° (2° Fahrenheit). This proposed selection criterion reflects the standard that appears in Chapter 4 of the Handbook 133 portion of the 1994 Handbook. NIST advised FDA (Ref. 3) that graduations larger than these could mean that it would not be possible to determine whether the appropriate reference temperature has actually been achieved, and, consequently, significant volumetric measuring errors could occur. NIST also pointed out that this criterion has been in Handbook 133 for many years. NIST advised that this criterion can be applied to any type of thermometer (e.g., the commonly used mercury-in-glass thermometer or electronic device). FDA tentatively concludes, based on these factors, that 1°C or 2°F constitute the appropriate minimum graduations for thermometers that are to be used under these regulations.

ii. *Linear measuring equipment.* The 1994 Handbook contains no requirements for selection criteria for linear measuring equipment. However, in its letter to FDA, NIST suggested (Ref. 3) that any regulations on ensuring the accuracy of net quantity of contents declarations should include provisions on linear measuring devices because such devices are used in a variety of ways to determine net contents. For example, depth gauges are used to measure the headspace from the top of a package to the level of the product, and that distance is used to calculate the volume of product in the package (see analytical method in proposed § 101.225(f)).

NIST pointed out that while the 1994 Handbook contains no selection requirements for linear measuring equipment, it does contain a number of recommendations for such selections.[4] However, NIST expressed concern about these recommendations. NIST's concern focused on the suggestion in Handbook 133 that a 36-inch ruler be used for measurements of 25 inches or less, and that a 100-foot tape be used for measurements of greater than 25 (in). NIST explained that these provisions might be too inflexible in some circumstances to be practicable. NIST stated that it did not seem logical that a 36-inch ruler that could be used for measurements of 25 inches or less could not also be used to measure a slightly longer distance (e.g., 30 (in)). Thus, NIST suggested that FDA adopt a requirement for use of a tape or ruler of appropriate length, with a minimum graduation of 1/64 inch (or 0.5 milliliter (mm)) or less for equipment of 25 (in) or less or a minimum graduation of 0.1 inch (2 mm) for equipment of greater than 25 (in), without any limit on the distances that these devices can be used to measure.

NIST stated that the requirement should also express the 25-inch linear criterion as a metric value of 63.5 cm, explaining that the metric recommendations in section 5.3.1 of Handbook 133 are incorrect because of an inadvertent conversion error (Ref. 3). Also, NIST stated that the metric expressions of maximum permitted measurement errors in section 5.3.1 (i.e., 0.4 mm and 2.5 mm) should be expressed in terms of graduation values commonly found on precision metric tapes and rulers (i.e., 0.5 mm and 2 mm), rather than precise equivalents.

FDA is proposing in § 101.215 (b)(1) and (b)(2) to adopt the requirements that NIST suggested for tapes and rulers. As discussed above, FDA has tentatively determined that it will facilitate interstate shipment of product, and thus be of significant value, if the agency established standards for equipment used in determining the accuracy of net quantity of contents declarations. Given the well-recognized expertise of NIST on weight and measure matters, FDA considers it appropriate for the agency to defer to NIST in the development of those standards.

FDA is not proposing a standard for selection of calipers and depth gauges used to determine the level of fill in packages labeled by volume (headspace). NIST suggested only that a caliper or a depth gauge used to make such measurements be suitable in design and measuring range, and that the values of its smallest measurement unit be suitable for the purpose for which it is to be used. Neither NIST nor FDA is aware of more specific criteria that could be proposed for these measuring instruments (Ref. 3). NIST stated that specific requirements regarding suitability would be difficult to develop because of the broad range of container sizes that could be encountered in the marketplace.

Given the lack of specificity of NIST's suggestion, FDA is not proposing to incorporate it in the agency's regulations, although the agency urges regulatory officials and manufacturers to adhere to the guidance contained in NIST's recommendation. FDA also requests comments on whether there are objective selection criteria that should be used for calipers and depth gauges.

iii. *Volumetric measuring equipment.* In § 101.215(c), the agency is proposing the following selection criteria for volumetric measuring equipment that pertain to the graduations on, and the size of, the equipment:

a. Size. In § 101.215(c)(1), FDA is proposing to require that a volumetric measure used in fluid volumetric determinations be of such size that no volume less than 25 percent of the maximum capacity of the volumetric measure is measured. For example, a graduate with a capacity of 4 fluid ounces could not be used to measure volume of less than 1 fluid ounce. While the proposed requirement may not be readily apparent in the 1994 Handbook, NIST advised (Ref. 3) that it is actually present through incorporation by reference of Handbook 44.

[4] See section 5.3.1, page 5–6 of the Handbook 133 portion of the 1994 Handbook.

In its letter to FDA, NIST advised (Ref. 3) that, the criterion was developed by NIST many years ago and has been widely used by most State and local regulatory agencies since its development.[5] The criterion is based on the fact that when small amounts are measured, the error that comes within individual gradient can constitute a rather large percentage of the product measured. The 25-percent limit provides a means of controlling this factor.

NIST pointed out that section 4.44, ''Graduates,'' in Handbook 44 provides tables specifying the design criteria for graduates (one type of volumetric measure) that limit their lower measuring range. These tables use the 25-percent criterion as the basis for prohibiting measurements below certain capacities of the graduate.

b. Graduations. In § 101.215(c)(2), FDA is proposing a selection criterion for volumetric measuring equipment that pertains to the maximum size of each individual graduation appearing on the volumetric measure. For such graduations, the agency is proposing to require that any volumetric equipment have a maximum graduation value related to the MAV. (As discussed previously in this preamble, one of the basic requirements of the 1994 Handbook is that the variation of individual package contents from the labeled quantity not be ''unreasonably'' large. The 1994 Handbook defines unreasonably large deviations in terms of the MAV, which varies with the size of the package.) The proposed criterion, which NIST advised has been in Handbook 133 since 1981 (Ref. 3) and has been widely accepted, requires that volumetric measuring equipment have a maximum graduation of no greater than ⅙ of the MAV for the labeled net quantity of contents of the package being measured. NIST explained in its letter to FDA that the criterion is intended to ensure that volumetric measuring equipment can accurately detect MAV deviations (Ref. 3).

NIST pointed out that frequently the ⅙ MAV criterion will not result in an exact equivalent to most graduations provided on volumetric measures. Under such circumstances, the most commonly used graduation should be selected. For example, where a 100 mL flask is to be used for a volumetric measurement, proposed § 101.245(f) (Table 3 ''Liquid or Dry Volume MAV's for Individual Packages Labeled in Metric Units'') provides that the MAV for the flask is 5.5 mL. When this MAV is divided by 6, a graduation criterion of 0.917 mL results. Thus, graduations smaller than 0.917 mL must be present on the 100 mL volumetric measure. NIST states that the most common graduation on a flask conforming to such a criterion would be a 0.5 mL graduation. Flasks marked 0.1 mL graduations could also be used but would rarely be available. A 100 mL buret marked with 0.1 mL graduations could be used. Flasks marked only with 1 mL or larger graduations would not meet the ⅙ MAV criterion.

Given the well-recognized expertise of NIST on weight and measure matters, it is appropriate for FDA to defer to NIST in the development of this ⅙ criterion. FDA tentatively concludes that the graduations that will result under this criterion will be adequate to enable regulatory officials to make accurate and fully informed judgments with respect to the MAV. FDA is therefore proposing to adopt the standard.

iv. *Gravimetric measuring equipment.* In § 101.215(d), FDA is proposing criteria for selecting gravimetric measuring equipment. These criteria are intended to ensure the appropriateness of the equipment used to measure the contents of the package being evaluated. The proposed criteria are a reiteration of those in the 1994 Handbook (including references to Handbook 44 in the Handbook 133 portion of the 1994 Handbook). FDA tentatively finds that more criteria are needed to guide the selection of gravimetric equipment than are needed to guide the selection of other types of measuring equipment because of the great complexity of gravimetric equipment. For gravimetric equipment, not only must the graduations on a balance be appropriate, but the design of equipment must also be appropriate for measurement of the package. In addition, the equipment must be functioning properly to make the measurement, and many factors may affect the way the equipment functions.

a. Gravimetric equipment design. With respect to gravimetric equipment design, proposed § 101.215(d)(1) (i) and (ii) provide that the portion of the balance on which the package is placed for weighing (i.e., the load receiving element) must be large enough to hold the package and be of sufficient weighing capacity for the package. Proposed § 101.215(d)(1)(iii) requires that, based on the 1994 Handbook, the balance have a minimum number of graduations, referred to as ''scale divisions'' (i.e., 100). FDA is proposing this number based on the 1994 Handbook (see page 2–11, Table 3 of Handbook 44). NIST advised FDA that at least 100 divisions are necessary to permit reliable assessments of the performance of a balance.

In addition, FDA is proposing a ⅙ MAV criterion for the maximum size of the individual scale divisions. This criterion is consistent with the ⅙ MAV volumetric graduation criterion, and FDA is proposing it for the same reasons that underlie the volumetric graduation criterion. Assessment of conformance with this criterion will also be made in a manner that is consistent with the approach discussed previously for the volumetric graduation criterion, except that the appropriate gravimetric tables (e.g., Tables 1 and 2 in the proposed regulation would be used to determine the MAV. NIST advised FDA that the proposed ⅙ gravimetric criterion has also been in Handbook 133 since 1981 (Ref. 3) and has been widely accepted.

b. Gravimetric equipment performance. With respect to gravimetric equipment performance, FDA is proposing selection criteria that will ensure that balances are sensitive enough to measure small variations in the net contents of different packages, which may be made with different packaging materials, without weighing errors attributable to the balance that would create an unfair bias concerning the weighing results. These sensitivity criteria will focus on ensuring that any balance selected for making measurements will not produce unacceptable errors (subsequently referred to as ''rejection criteria'') in a variety of performance tests.

Details of four performance tests are set forth in proposed § 101.215(d)(2). The proposed provisions require that the tests be performed before each initial daily use, use at a new location, or use in the presence of any indication of abnormal equipment performance, and that the balance be found in such tests not to exceed the criteria in the regulation for rejection. FDA is proposing to require that the tests be conducted before use of the balance because the sensitivity of the measuring device can be affected by handling and transportation to the test location, routine wear of mechanical or electrical components, and environmental factors at the test location such as temperature and air currents.

All of the proposed tests involve multiple weighings of test loads consisting of a variety of calibrated test weights (referred to as ''mass standards''). The proposed procedures, which reflect the procedures set forth in section N.1., page 2–11, Handbook 44, include an ''increasing load test'' (§ 101.215(d)(2)(i)), which is conducted by applying mass standards to the

[5] FDA also has imposed the 25-percent criterion on its field personnel for many years (see section 428.21 of FDA's Investigations Operations Manual).

balance in increasing increments (e.g., 1, 2, 3, and 4 pounds (lb)—up to 10 percent more than the package gross weight) and, for most types of balances, a ''decreasing load test'' (§ 101.215(d)(2)(ii)), which is conducted by reversing the increasing load test procedure. In addition, FDA is proposing a test involving off-center loading (called a ''shift test'' in Handbook 44) (§ 101.215(d)(2)(iii)), to determine whether a balance accurately weighs packages placed anywhere on the load receiving element (e.g., the scale platter or pans). Finally, FDA is proposing a ''repeatability performance test'' (§ 101.215(d)(2)(iv)), wherein mass standards are weighed at least twice.

NIST stated in its letter to FDA (Ref. 3) that the proposed test procedures are appropriate for balances used in determining the net contents of packaged food, and that these test procedures are based on the procedures in Handbook 44 for verifying the accuracy of balances used in supermarkets. NIST also advised that, although there are four different performance tests, only 2 to 3 minutes are required to complete them. In fact, NIST pointed out they are often looked upon as simply one test comprised of four different weighing procedures. NIST explained that each of the four different procedures is needed because each duplicates one of the most common ways that weighing devices are used. NIST stated that improperly functioning balances may not always register the same quantity with increasing and decreasing loads, repeated weighings of the same quantity, and weighings of the same quantity in different locations of the load receiving element. NIST stressed that it is important to evaluate balance performance using all common weighing procedures that may be used. To illustrate the long history of use and acceptance of the proposed test procedures, NIST pointed out (Ref. 3) that similar test procedures were published on January 31, 1945, by NIST (then called the National Bureau of Standards) in NBS Handbook H37, ''Testing of Weighing Equipment.''

As mentioned, FDA is proposing that balances not have errors exceeding the rejection criteria in any of the performance tests. The agency sets out the proposed rejection criteria in proposed § 101.215(d)(3). Under this provision, if the criteria are exceeded in any individual weighing that is a part of a performance test, the balance does not meet the gravimetric selection criteria, and the balance may not be used to determine whether an inspection lot is violative.

The gravimetric selection criterion concerns the size of the error that will trigger rejection when that error is expressed in terms of a number of scale divisions (see proposed § 101.215(d)(1)(iii)) on the balance. In the 1994 Handbook, this criterion varies according to the type of balance used and the weight of the individual package unit being tested. The 1994 Handbook expresses this criterion in terms of two classes of balances that are identified in Handbook 44 as Class II and Class III balances. (Class I balances pertain to the most precise type of balances that are used primarily for weighing precious stones. These balances are not used for weighing food.) Class II balances are analytical balances which are generally found only in laboratories. Class III balances are generally used at supermarkets by investigators in the field. A Class III balance might have only 3,000 scale divisions, whereas a Class II balance might have more than 50,000 scale divisions.

Proposed Table 1 in § 101.215(d)(3)(i) is derived from the 1994 Handbook. It contains directions on how to determine the class of the balance based on value of the smallest balance division and the minimum and total number of balance divisions. Proposed Table 2 in § 101.215(d)(3)(ii), which is also derived from the 1994 Handbook, contains directions on how to determine the number of balance divisions for rejection based on the class of the balance and the weight of the package in terms of the total number of balance divisions.

The criteria for rejecting a balance have been set forth in Handbook 133 since July 1986.[6] According to NIST, these criteria were developed in conjunction with the Scale Manufacturers Association, a national trade association that represents the majority of U.S. manufacturers of weighing devices. Although FDA is proposing the same criteria as those in the 1994 Handbook, FDA is not proposing to use the term ''tolerance'' to identify the standard proposed in Table 2 in § 101.215 because that standard focuses on the number of errors for rejection rather than the number of errors that are permitted.

c. *Equipment standardization.* FDA is also proposing a category of requirements that pertain to the standardization of other types of measuring equipment. NIST recommended (Ref. 3), and FDA agrees, that it is therefore appropriate that all Federal requirements for standardization incorporate the NIST standard units of weight and measure. Thus, FDA is proposing in § 101.215(e) that all measuring equipment be standardized to the NIST standard units of measure.

As recommended by NIST (Ref. 3), FDA is proposing that the standardization take place through either direct or indirect comparison with NIST standards. For example, a mass standard used in the field may be compared to either the corresponding NIST mass standard or to a mass standard that has itself been directly compared to the corresponding NIST mass standard. NIST advised that the comparison should be made in a manner consistent with well-recognized procedures developed by that agency. Specifically, NIST recommended use of calibration procedures found in NBS Handbook 145, Handbook for the Quality Assurance of Metrological Measurements, November 1986 (Ref. 5), for all measuring equipment other than time measuring devices. For time measuring devices, NIST recommended use of its standard operating procedure (SOP), Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Stopwatches (Ref. 6).

NIST also advised, however, that Handbook 145 is being updated to include, in part, the SOP for stopwatches. In view of current updating of Handbook 145, FDA tentatively concludes that it is not necessary to propose procedures for standardizing stopwatches. The agency intends to incorporate the most up-to-date version of the test procedure for stopwatches in Handbook 145 in any final rule that may issue based on this proposed rule. If the anticipated revision of Handbook 145 has not been completed by the time of the final rule is issued, FDA may rely on NIST's SOP for stopwatches in the final rule.

NIST recommended that, except for volumetric glassware, the comparison to NIST standards be made on a routine basis (e.g., annually for equipment used on a weekly basis) (Ref. 3). NIST also advised that where neither Handbook 145 nor the SOP for stopwatches specifically provides calibration procedures for a particular type of measuring device, the requirement that calibration be done with a standard traceable to NIST can be satisfied by using nationally accepted standards and procedures that are traceable to NIST. NIST advised that calibration certificates or reports of tests of

[6] Section 3.1 of Handbook 133 incorporated the criteria by referencing the tolerances described in section T.N.3.2, page 2–22 of Handbook 44.

equipment should be maintained by FDA field offices to ensure that appropriate calibration intervals are met (Ref. 3).

Also, NIST provided guidance concerning the amount of error that it would consider acceptable in calibration procedures for stop watches, thermometers, linear measuring devices, volumetric measures, and mass standards (Ref. 3).

Because NIST is the Federal authority in matters concerning weights and measures, FDA tentatively concludes that it should follow NIST's recommendations in these matters. By following the recommendations of the agency with the most expertise on these matters in the Federal Government and whose views are informed by regular contacts with NCWM and the States, FDA should be able to establish a uniform national system that will be as efficient and workable as possible. FDA is therefore proposing to adopt NIST's recommendations for standardizing the types of equipment enumerated in the discussion that follows.

(*i*). *Stopwatch standardization.* In § 101.215(e)(1), FDA is proposing to require that any stopwatch used in procedures for measuring net contents not have an error exceeding ±2 seconds in a 3-hour time period. This proposed requirement is a reiteration of the provision on stopwatches that appears on page 3–34, section 3.13.1 of the Handbook 133 portion of the 1994 Handbook, except that the maximum permissible error pertains to the error during a 3-hour, rather than 2-hour time period. NIST stated that, except for an inadvertent typographical error, Handbook 133 would contain a 3-hour time period (Ref. 3). NIST explained that the Handbook 133 stopwatch criterion was based on Federal Specification GG–S–764C, which provides that a 3-hour time period be used for standardization.

(*ii*). *Thermometer standardization.* In § 101.215(e)(2), FDA is proposing to require that any thermometer used in procedures for measuring net contents not have an error exceeding ±1° Celsius (2 °F). This proposed requirement reflects the provision pertaining to thermometers that appears on page 4–4, section 4.2 of the Handbook 133 portion of the 1994 Handbook.

(*iii*). *Linear measure standardization.* The 1994 Handbook contains no requirements for linear measure standardization. As pointed out above, however, NIST advised (Ref. 3) that the proposal should include such requirements because linear measuring devices may be used in a variety of ways to determine net contents. NIST advised further that the 1994 Handbook does contain a number of recommendations for standardization of some linear measuring devices (see section 5.3.1, page 5–6 of the Handbook 133 portion of the 1994 Handbook). NIST stated that section 5.3.1 inch-pound recommendations could serve as a basis for requirements in the proposal pertaining to tapes and rulers. The recommendations provide, in part: (1) That, for measurements of 63.5 cm (25 in) or less, measurement errors shall be no greater than ±0.39 mm (± 1/64 inch), and (2) that, for measurements greater than 63.5 cm (25 in), measurement errors shall be no greater than ±2.5 mm (± 0.1 inch). NIST recommended that FDA proposes to include provisions that reflect these recommendations in the regulation.

FDA tentatively concludes that it should generally follow NIST's recommendations in matters concerning weights and measures. FDA is therefore proposing to adopt NIST's recommendations for standardization of tapes and rulers.

For calipers and depth gauges used to determine the level of fill in packages labeled by volume (headspace), the agency is also proposing standardization criteria based on information provided by NIST (Ref 3). NIST recommended that FDA establish an error limit of ± 50 micrometers for lengths of up to 400 mm; of ± 100 micrometers for lengths of 400 mm to 800 mm; and of ± 150 micrometers for lengths of 800 to 1,000 millimeters. NIST explained that such a requirement is needed to ensure that measurement errors attributable to these measuring instruments not adversely affect the results of the test. NIST based its recommendation for these error limits on the accuracy requirements for mechanical and electronic calipers and depth gauges that the American Society of Mechanical Engineers is considering including in its industry standard (ASME B89 1.14) (Ref. 7) for these devices.

FDA agrees with NIST that there is a need for standardization of these devices and is deferring to NIST for the appropriate standards. In proposed § 101.215(e)(3)(iii), Table 3, FDA is proposing to adopt the error limits for calipers and depth gauges that are recommended by NIST.

(*iv*). *Volumetric standardization.* In proposed § 101.215(e)(4), FDA is proposing a requirement that any flask or cylinder used in a procedure for measuring net contents not exceed error limits that vary according to the full capacity that is measured by the device. This proposed requirement reflects the error limits for flasks and cylinders that appear in Appendix I, page I–3 of the Handbook 133 portion of the 1994 Handbook. These error limits have been in Handbook 133 since before 1971 and are widely accepted as reasonable and appropriate. NIST advised FDA (Ref. 3) that, although error limits should be provided for both inch-pound and SI units of measure (volumetric measures may be graduated in either system of measure), all error limits should be expressed in terms of SI units only (i.e., mL) because metric measures are used more frequently in laboratories where standardization generally occurs. Therefore, the error limits that FDA is proposing in § 101.215, Table 4 are in SI units. Also, NIST pointed out that the error limits have been developed for liquids at the reference temperature that is closest to most common room temperature so as to minimize the adjustments in glassware and calibration liquid temperature that will have to be made to determine whether error limits have been exceeded.

(*v*). *Gravimetric standardization.* In § 101.215(e)(5), FDA is proposing to require that gravimetric measuring equipment used to measure net contents not exceed error limits that vary according to the size of the individual mass standard and the type of balance (i.e., Class II or Class III) used for the measurement. For Class III error limits, the proposed requirement reflects the error limits for field standard weights that appear on pages I–1 and I–2 in Appendix I of the Handbook 133 portion of the 1994 Handbook. These widely recognized error limits have been in Handbook 133 since 1981. As with volumetric standardization, while error limits need to be provided for both in inch-pound and SI units of measure (gravimetric measures may be graduated in either system of measure), all error limits are proposed to be expressed in terms of SI units only (i.e., mL) because metric measures are used more frequently in laboratories where standardization generally occurs.

For Class II balances, however, NIST recommended (Ref. 3) that significantly smaller error limits be adopted because these balances can reliably measure far smaller quantities than Class III balances. NIST advised that, while it had published some guidance concerning appropriate error limits in Class II balances (i.e., National Bureau of Standards Circular 547, Section 1, which is out of print), FDA should rely on Tables X5.1 and X5.2 of American Society of Testing and Materials (ASTM) Standard Specification E 617–91, Standard Specification for Laboratory Weights and Precision Mass Standards (Ref. 8) because the ASTM

Tables are more current than Circular 547.

Given NIST's expertise, FDA has tentatively decided to accept its recommendation. FDA is proposing to include the ASTM values in Tables 5 and 6 for Class II balances and 7 and 8 for Class III in § 101.215(e)(5).

FDA requests comments on the appropriateness of doing so.

4. Analytical Procedures

The 1994 Handbook provides specific instructions for a wide variety of methods of analysis for determining the net contents of the packages in samples. These methods are found in Chapters 3, 4, and 5 of the Handbook 133 portion of the 1994 Handbook. The methods fall into two broad categories. The first category consists of general test methods (referred to as ''core methods'' in this preamble) that are for use for all products. The 1994 Handbook contains core methods of analysis for determining net mass or weight, drained mass or weight, volume, count, and tare weight. The second category consists of core test methods that have been modified for use with specific products. The 1994 Handbook contains modified methods of analysis for determining the net mass or weight of aerosols, vacuum packed coffee, flour, and frozen foods. Also, the 1994 Handbook contains modified methods of analysis for determining the drained mass or weight of frozen foods and glazed raw seafood. With respect to volume, the 1994 Handbook contains modified methods of analysis for determining the net contents of mayonnaise, salad dressing, ice cream, frozen desserts, and fresh oysters.

FDA sees considerable merit in the 1994 Handbook's approach of providing directions for the use of analytical methodology because such directions will help to ensure uniform implementation of the methodology and thus contribute significantly to uniform enforcement. Without such directions, there would be a significant opportunity for analytical findings to differ among those who perform the analysis. FDA has therefore included in this proposal specific instructions to follow with respect to how to perform analytical procedures. The instructions are derived largely from methodology in the 1994 Handbook.

The agency is proposing procedures for determining net mass or weight in § 101.220, for volume in § 101.225, for count in § 101.230, and for tare in § 101.235. Consistent with methodology in the 1994 Handbook, each of the proposed sections sets out core procedures for use for all foods. In addition, the proposed sections on determining mass or weight and on determining volume include additional procedures for use with specific foods or for use in specific circumstances, which are explained in the proposed provisions.

Although the proposed methods have been taken largely from the 1994 Handbook, FDA has made several nonsubstantive changes for clarity and brevity. For example, the 1994 Handbook contains a number of methods for use only with certain specific foods. As mentioned above, these methods are generally core test procedures that have been modified for use with the particular food. These modifications are intended to facilitate the measuring process for the specific foods. However, while the modifications may be helpful for making the measurement, many of the descriptions of the modified methods include detailed measuring instructions that are not critical to achieving accurate analytical results (Ref. 3). The agency's tentative view is that it would be unnecessarily redundant to include each of the specific modifications of core methods in the regulation. Instead, FDA is proposing the general core procedures with some modifications for clarity.

In addition, where the 1994 Handbook methods are consistent with methodology in ''Official Methods of Analysis of the Association of Official Analytical Chemists International (AOAC),'' 16th ed., 1995, FDA is proposing to incorporate by reference the appropriate AOAC method in the regulation rather than the 1994 Handbook method because this approach is consistent with the agency's general preference for using AOAC methods. This preference is reflected in 21 CFR 2.19 of FDA's regulations which states that it is the policy of the agency in its enforcement programs to utilize AOAC methods where the analytical method is not prescribed in a regulation. Where the 1994 Handbook methods are not consistent with AOAC methodology, and the AOAC method appears to be more appropriate than that in the 1994 Handbook, FDA is proposing to adopt the AOAC method rather than the 1994 Handbook method. The combined use of more general core methodology and the incorporation of AOAC methods by reference in the proposal makes the proposed provisions significantly shorter than the corresponding provisions in the 1994 Handbook. As a result, the proposed provisions should be easier for affected parties to follow.

In a number of instances, FDA is proposing methodology that differs significantly from that in the 1994 Handbook. These differences are specifically addressed as follows.

a. *Proposed § 101.220, net mass or weight.* As mentioned above, analytical procedures pertaining to net mass or weight appear in proposed § 101.220, which contains both general procedures for making particular types of net mass or weight determination for foods, referred to as the ''core procedures,'' and more specific procedures for determining the net mass or weight of certain specific foods. Regardless of which type of measuring procedure is used, it will need to be performed on appropriate equipment and in an appropriate manner. FDA is proposing to reflect this fact in § 101.220(a), which states that all measuring equipment must conform to § 101.215, and that good weighing procedures must be used for all measurements. FDA considered proposing a prescriptive provision setting forth specifically what good weighing procedures must include. However, the agency has tentatively concluded that there are simply too many factors that may affect what procedures should be used for determining weight in a particular situation. FDA does, however, expect that all weighings will be performed on balances that: (1) Have been properly leveled; (2) are maintained at a zero reading when empty; (3) are properly dried after each weighing of moist packages (e.g., frost crystals on packages); and (4) are used in a manner that is consistent with the balance manufacturer's instructions.

The core procedure for net mass or weight is set out in proposed § 101.220(b)(1). This provision describes the general steps to follow in making this type of measurement. FDA is proposing that net mass or weight be determined by subtracting the average used tare mass or weight, determined in accordance with § 101.235, from the gross mass or weight of each package in the sample. This core procedure has been included in the Handbook 133 portion of the 1994 Handbook since 1981. Simply stated, what this provision means is that to determine the net weight of the contents of a package, it is necessary to subtract the weight of the packaging from the gross weight of the package. The appropriateness of this approach is clear as a matter of common sense.

In § 101.200(b)(2), FDA is proposing a specific procedure for determining net weight of unglazed frozen seafoods and vegetables. The proposed procedure is incorporated by reference from the ''AOAC,'' 16th ed., 1995 section 963.26, under the heading ''Net Contents of

Frozen Food Containers Procedure 1963.'' The proposed procedure is not identical to the procedure in Section 3.12, page 3–33 of the Handbook 133 portion of the 1994 Handbook. (Handbook 133 advises that all frozen products should be measured with the core net weight procedure that appears in that Handbook.) However, as stated above, where AOAC procedures are available, FDA is proposing to require that those procedures be used, unless the agency provides in this preamble a reason for requiring other procedures. Section 963.26 of Official Methods of Analysis of the AOAC specifically pertains to frozen vegetables and, by reference in section 35.1.02(b) of this AOAC analytical manual, to unglazed frozen seafoods. FDA tentatively concludes that use of the more specific AOAC procedure is appropriate because it clarifies that the weight of any frost found inside the food package is added to the weight of the seafood to determine the net contents. (Frost inside the package generally comes from the liquid portion of the food, whereas frost outside the package generally comes from the atmosphere.)

The core procedure for determining drained mass or weight appears in proposed § 101.220(c)(1). This procedure is similar to the core procedure for net mass or weight in that the drained weight is calculated by subtraction of a tare weight from a gross weight. However, under proposed § 101.220(c)(1), the tare weight is calculated by including the weight of any liquid drained from the product with the weight of the other packaging materials. The tare weight is measured by placing the product on an appropriate sieve that is positioned at an appropriate angle on a receiving pan, placing all packaging materials on that same pan, draining the product for exactly 2 minutes, and weighing the pan after removal of the sieve containing the product (proposed § 101.220(c)(1) (i) to (iii)). This core procedure does not directly measure the weight of the drained food remaining in the sieve used to drain the liquid from the food.

FDA developed the proposed § 101.220(c)(1) after close review of both the drained weight core procedure in section 3.10, page 3–24, of Handbook 133 and the existing AOAC procedures for drained weight in ''Official Methods of Analysis of the AOAC,'' 16th ed., 1995, section 968.30, under the heading ''Canned Vegetables Drained Weight Procedure.'' The drained weight procedures in both documents are quite similar, but there are some differences. FDA is proposing to resolve the differences by adopting some elements from both documents for its core procedure.

Both the AOAC procedure and the Handbook 133 procedure provide for drained weight determinations using a 203-mm (8-inch) U.S. No. 8 standard test sieve for packages with net quantity of contents of 1.36 kg (3 lb) or less and a 12-inch (305 mm) U.S. No. 8 standard test sieve for packages with net contents greater than 1.36 kg (3 lb). However, the Handbook 133 procedure does not provide for use of a different size sieve for canned tomatoes, as the AOAC procedure does. The AOAC procedure specifies that for canned tomatoes, a U.S. No. 11.3-mm (7⁄16-inch) standard test sieve is to be used. Given that AOAC procedures are generally better suited for FDA enforcement purposes than Handbook 133, the agency is proposing to require in § 101.220(c)(1)(ii) that drained weight for canned tomatoes be determined with a U.S. No. 11.3-mm (7⁄16-inch) standard test sieve.

In one respect, however, the Handbook 133 drained weight core procedure is more appropriate than the AOAC core procedure for canned vegetables. The AOAC procedure is not specific about how the drained solids should be weighed. Thus, under the AOAC procedure, weighings could be made either (1) Through direct weighings of the sieve with the drained solids, followed by subtracting the weight of the sieve, or (2) through indirect weighings involving subtraction of the weight of the drained liquid and package tare weight from the package gross weight. NIST has advised (Ref. 3) that the 1994 Handbook procedure is preferable because the indirect approach provides less opportunity for continued drainage of the solids after the specified drain time. NIST explained that with the indirect procedure, when the sieve is removed the precise weight of the drained liquid is obtained, whereas with the direct approach, the solids continue to drain during weighing, resulting in a lower drained product weight.

FDA recognizes that, if it were to permit use of both direct and indirect drainage procedures, there would be an opportunity for drained weights to differ depending upon which procedure is used. Such differences would be contrary to the agency's goal of establishing a system that ensures that there will be as much uniformity in measurements as possible. Accordingly, FDA is proposing to provide for only indirect weighing in the drained weight procedure in § 101.220(c)(1).

The agency notes that in the food standard regulations on canned fruit (21 CFR part 145) and canned vegetables (21 CFR part 155) there are drained weight procedures that are based on the direct weighing procedure. If FDA adopts the procedure set forth in § 101.220, it will consider whether to propose to revise those regulations for consistency with § 101.220 or to remove the procedures from those regulations.

With respect to procedures for specific products, the agency is proposing in § 101.220(c)(2) to incorporate by reference AOAC procedures for determining drained weight for glazed vegetables and frozen seafood (except for frozen shrimp and crab meat) (AOAC section 963.18), frozen shrimp (AOAC section 967.13), and frozen crab meat (AOAC sections 967.13 and 970.60) and, in § 101.220(d), shucked oysters (AOAC section 953.11). Corresponding procedures appear in Handbook 133 in sections 3.14 (page 3–35), 3.13 (page 3–35), and 4.16 (page 4–43). The Handbook 133 procedures differ from the AOAC procedures in only two respects. First, section 3.13 provides for thawing the frozen shrimp or crab meat in a plastic bag in a water bath, whereas AOAC sections 967.13 and 970.60 provide for thawing the product directly in the water bath at a specific temperature without being placed in any bag. In addition, section 4.16 of Handbook 133 provides for draining the liquid from the shucked oysters with a U.S. No. 8 standard test sieve, whereas AOAC 953.11 provides for draining this liquid with a custom designed sieve referred to as ''skimmer.'' Again, without a specific reason to do otherwise, FDA is proposing to require that the AOAC procedure be followed.

b. *Proposed § 101.225, volume.* Proposed § 101.225 contains both general procedures for determining the net volume of most foods and more specific procedures for determining net volume of specific foods.

In § 101.225(a), FDA is proposing to require that measuring equipment conform to § 101.215, and that good weighing and measuring procedures be used for all measurements.

The core procedures for net volume appear in proposed § 101.225 (b) and (c). Both procedures have been in Handbook 133 since 1981 and are widely recognized as valid and appropriate methods (Ref. 3). They are essentially the same as core procedures appearing in chapter 4 of the Handbook 133 portion of the 1994 Handbook.

The procedure prescribed in proposed § 101.225(b) uses only a volumetric measure to determine the net contents. It involves pouring the entire contents of a package into a volumetric measure (see proposed § 101.201(a) for appropriate reference temperature) and

comparing the liquid level with the graduations on the measure.

The procedure prescribed in proposed § 101.225(c) uses both a volumetric measure and a balance to determine the net contents, with most measurements involving a gravimetric procedure for net volume. Initially, the proposed procedure requires that a test demonstrate that individual packages within the sample have constant product density (weight/volume at the appropriate reference temperature). For this product density test, the same measured amount of product from two individual packages is weighed. Where the weight is the same in both cases, information from the weighings is used to calculate the volumes of the remaining individual packages of product in the sample from the weights of those packages. NIST explained (Ref. 3) that the product density test must demonstrate the same measured weight in both cases because only when product density is constant among all of the individual packages within the sample may the weights of the packages be used to calculate the volumes of those packages. If used in other circumstances, net volume determinations made using proposed § 101.225(c) could have significant errors. When product density is constant, however, the gravimetric procedure in proposed § 101.225(c) is considerably faster than the procedure in proposed § 101.225(b) because, under § 101.225(c), most packages are simply weighed, while under § 101.225(b), all packages must be opened, their contents poured into a volumetric measure, and the liquid level of these contents compared with the graduations on the measure.

NIST pointed out that although the gravimetric procedure proposed in § 101.225(c) basically relies on constant variability, some flexibility must be provided for in the procedure because most types of balances display weight in the form of a digital reading that has been rounded by computerized components within the balance to the nearest whole scale division (Ref. 3). Thus, the balance may introduce variation of as much as one-half scale division. In the presence of such balance variation, more than a one scale division difference must be present to conclude that differences in weights are attributable to the food rather than to the balance. Thus, NIST advised, only where more than one scale division is present between the 2 volumes weighed in the product density test should proposed § 101.225(c) contain a provision prohibiting its use to determine net volume because the product density is not constant (see proposed § 101.225(c)(3)(v)).

NIST advised (Ref. 3) that proposed § 101.225(c) may appear different from the Handbook 133 gravimetric procedure for volume to some affected parties because of the presence of the above stipulation that the procedure not be used where more than a one scale division difference between packages is present. However, NIST pointed out (Ref. 3) that Handbook 133 actually needs this stipulation to be properly updated. NIST explained that the existing gravimetric procedure in Handbook 133 was developed for the types of scales and balances used by weights and measures officials in the 1960's and 1970's, which did not have the computerized components with the capability of rounding to the nearest whole scale division.

In § 101.225 (d), (e), (f), and (g), the agency is proposing measuring procedures for specific products. In paragraphs (d) and (e), FDA is proposing to incorporate by reference AOAC procedures for determining net volume for shucked oysters, clams, or scallops and for ice cream and frozen desserts. Corresponding procedures appear in Handbook 133 in sections 4.16 (page 4–43), and 4.15 (page 4.38). The Handbook 133 procedures differ in only a few respects. For shucked oysters, clams, or scallops, the AOAC procedure includes specific procedures for preparing the food for measurement that are not contained in Handbook 133. For ice cream and frozen desserts, the AOAC procedure includes specific procedures for handling and freezing the food that are not included in Handbook 133. Also, the AOAC procedure in Method I (AOAC 968.14) provides that kerosene is the immersion fluid for the measurement, rather than cold water, as provided for in Handbook 133.

NIST points out (Ref. 3) that there could be significant problems for field regulatory officials to safely transport and handle kerosene. NIST stated that kerosene is specified in the AOAC procedure to ensure that the food will not mix with the immersion liquid. NIST also advised, however, that water of 0.56 °C (33 °F) or below may be used as the immersion liquid provided there are no visual indications of mixing.

Based on NIST's position on this matter and the deference that it considers to be due NIST, FDA tentatively concludes that it should permit the use of sufficiently cold water for measuring the volume of ice cream and frozen desserts. FDA is therefore proposing to permit substitution of water of 33 °F (0.56 °C) or below for kerosene in the AOAC procedure, provided that the food does not mix with the water.

In § 101.225(f), FDA is proposing a volumetric depth gauge procedure that may be used to determine volume where the food has a smooth and level headspace (e.g., oils, syrups, and other viscous liquids). The proposed procedure involves determining the headspace of the package at the point of contact with the food using a depth gauge; emptying, cleaning, and drying the package; and determining the amount of water necessary to refill the package to the headspace present with the food. The proposed procedure reflects the procedure in section 4.6.1, page 4–12, of the Handbook 133 portion of the 1994 Handbook but with a few differences because of the NIST recommendations (Ref. 3).

FDA is proposing to require a 6-inch bubble level rather than at least a 10-inch level because NIST advised that 6-inch levels are adequate for the intended purpose and more commonly available than 10-inch levels (Ref. 3). Also, the agency is proposing no restrictions on the size of the micrometer depth gauge because the test procedure can be used on a wide variety of package sizes that may require the use of depth gauge rods of different lengths (Ref. 3). Further, section 4.6.1 of Handbook 133 states that the size of the micrometer measuring rod shall be 0 to 9 (in), but NIST recommended that no size be stipulated. NIST advised that, when this section of Handbook 133 was written, NCWM intended to provide guidance in selecting commonly available equipment appropriate for use in testing most products, but there was no intent on the part of NCWM to limit the procedure's use to measurements of less than 9 (in) (Ref. 3).

In § 101.225(g), FDA is proposing a volumetric air space procedure that may be used to determine volume where the food does not have a smooth and level headspace (e.g., mayonnaise). The proposed procedure involves determining the amount of air space above the product in the package and then the total container volume. Subtracting the airspace volume from the total container volume gives the product volume. The proposed procedure reflects section 4.8, p. 4–20 and section 4.14.2, p. 4–36, of the Handbook 133 portion of the 1994 Handbook.

There is, however, one significant difference between all of the procedures proposed in § 101.225 and the corresponding Handbook 133 procedures. The difference concerns reference temperatures. As mentioned previously in this preamble, a

''reference temperature'' is the temperature at which the fill of a food sold by volume must meet the declared net quantity of contents (see proposed § 101.205(m)). This temperature is important in measurements to determine the net volume because the volume that is occupied by any food varies with temperature. Where the temperature falls below the reference temperature, the volume decreases. As a result, a product that contains the declared net quantity of contents at the reference temperature could measure below the declared net quantity at a reduced temperature. If a regulatory official made a measurement at a reduced temperature, an appropriately labeled product might be considered violative. Such a situation would be unfair to the manufacturer. To prevent this situation, Handbook 133 prohibits measurement where product temperatures are below the appropriate reference temperature. Conversely, measurement at a temperature higher than the reference temperature could be unfair to consumers, but Handbook 133 does not address this situation.

To be fair to both consumers and manufacturers, the volumetric methodology that FDA is proposing in § 101.225 provides that the food be brought to the appropriate reference temperature before measurement of its volume. However, there is often no practicable way to maintain the reference temperature while all subsamples are being measured. The 1994 Handbook provides for this situation by advising that officials have some flexibility with respect to these temperatures in making fluid measurements, but it does not specify how much flexibility is appropriate. Without any constraints on this flexibility, there is reduced assurance of uniformity of enforcement. However, NIST suggested that one way to identify an appropriate amount of flexibility would be to specify those reference temperature ranges at which there would be no more impact in volume measurements than 0.01 percent of the measured volume (Ref. 3). NIST stated that measurements should be performed from −18 °C (0 °F) to −15 °C (5 °F) for frozen food, from 1.7 °C (35 °F) to 7.2 °C (45 °F) for refrigerated food, and from 20 °C (68 °F) to 22.7 °C (73 °F) for other foods. NIST explained that these temperature ranges would afford needed flexibility in making measurements (Ref. 3).

As the agency has stated repeatedly in this document, it has tentatively decided to follow all of NIST's recommendations on matters of weights and measures. FDA is therefore proposing to adopt NIST's recommendations for appropriate reference temperature analytical ranges in § 101.225(b)(1). Under this provision, all measurements of net volume are to be made at the NIST-recommended temperatures, unless FDA has specifically provided otherwise.

There is a second difference between § 101.225 and Handbook 133 concerning measuring devices used ''to deliver'' liquids. All volumetric measures are calibrated either ''to deliver'' or ''to contain'' a volume of liquid. The graduations of ''to deliver'' volumetric measures represent the volume of liquid in the vessel that can be poured from it. The graduations of ''to contain'' volumetric measures represent the volume of liquid in the vessel and do not represent the volume of liquid that can be poured from it (some liquid is inevitably retained after pouring). However, both types of measures actually measure the same quantity, and both types may be used to determine the volume of any liquid, provided appropriate procedures for use are followed. With proper use, the accuracy of the measurements from either type of volumetric measure is equivalent.

''To contain'' volumetric measures must be cleaned and dried between each use because the measure was calibrated and marked in comparison to a cleaned and dried volumetric standard. However, ''to deliver'' measures do not have to be prepared in this manner because they have been calibrated to deliver a specific amount of liquid after a specific drain time that is marked on the measures. These measures only have to undergo an initial wetting and draining treatment. Section 4.3.c. of Handbook 133 provides a set of directions for preparing these measures for use. The directions, which are consistent with the recommendations of NIST for such calibration (Ref. 3) have been reiterated in proposed § 101.225(b)(2)(ii).

However, some manufacturers of volumetric measures may use different emptying and drainage times in calibration procedures than those currently in Handbook 133. Where they do so, the manufacturer designates the appropriate time for emptying (including pouring out the liquid and draining it) or draining (excluding the time for pouring out most of the liquid) the measure. (Most manufacturers that do designate such a time, express it in terms of a draining time (Ref. 3).) NIST recommends that when a manufacturer designated emptying or drainage time appears on a measure, that time be used.

In view of this recommendation and of the fact that it is logical to assume that greater accuracy would consistently result from following the manufacturer's recommendation, when it is present, than more general procedures, FDA is proposing in § 101.225(b)(2)(ii)(B) to differ from Handbook 133 provisions by requiring the use of the manufacturer's delivery recommendations when they are present. FDA requests comment on the appropriateness of its approach.

FDA points out that its Investigations Operations Manual (IOM) directs its personnel to use only ''to contain'' volumetric measures, whereas the proposed provisions do not include this restriction because of the recommendations mentioned above by NIST (Ref. 3). If FDA adopts this proposal, the IOM will be modified to reflect this change.

c. *Proposed § 101.230, count.* Chapter 5 of the Handbook 133 portion of the 1994 Handbook contains two core procedures for checking net contents declared by count. The procedure may be used in all situations that involve counting the contents of each individual package. However, a gravimetric test procedure may also be used to determine count where product density (weight/volume at the appropriate reference temperature) is constant among all of the individual packages within the sample. (As discussed previously in this preamble, gravimetric procedures for other forms of expression of net contents provide reliable results only where product density does not vary among individual food packages.)

FDA is proposing the Handbook 133 individual count as a core procedure in § 101.230(a) and the gravimetric count core procedure in § 101.230(b). Where it may be used, the gravimetric procedure for net count is considerably faster than the procedure in proposed § 101.230(a), because most packages are simply weighed rather than being subjected to the procedure where all packages are opened, and their contents individually counted.

To determine whether the product density is constant, proposed § 101.230(b)(1) prescribes a product density test that requires that, for two individual packages, the net contents be weighed at the reference temperature and individually counted. These values are used to calculate the net weight of the package with the labeled count. For both packages, the labeled count must be calculated to weigh the same amount. As discussed previously in this document, because most types of balances may introduce some variation in measurements from computerized components that round to the nearest whole scale division, more than a one scale division difference must be

present to conclude that differences in weights are attributable to the food rather than to the balance. Thus, where more than one scale division is present between the two calculated weights of the labeled count in this product density test, proposed § 101.230(b)(1)(v) prohibits the use of the gravimetric procedure to determine net count because the product density is not constant.

Where more than one scale division is not present, proposed § 101.230(b)(2) contains a gravimetric measuring procedure wherein the balance used in the product density test is also used to determine the net weights of the individual packages in the sample, and the product density is used to convert the net weights to net counts. This procedure reflects the core procedure appearing in Chapter 5[7] of the Handbook 133 portion of the 1994 Handbook. This procedure has been in Handbook 133 since 1981.

The proposed procedure may appear to be different from the Handbook 133 procedure because of the presence of the stipulation against use of the procedure where there is a two or more scale divisions difference in the product density test. However, NIST recommended incorporating this stipulation to update the Handbook 133 gravimetric procedure for net volume (Ref. 3). As stated previously, the Handbook 133 procedure was developed for the types of scales and balances used by weights and measures officials in the 1960's and 1970's.

FDA points out that the core procedures for count in proposed § 101.230 (a) and (b), if adopted, will be used primarily for dietary supplements in tablet, capsule, or other unit dosage form rather than for food in conventional food form. For such dietary supplements, consumer value comparisons are facilitated primarily by information concerning the amount of dietary ingredient in the unit form and the number of such units in the food package. A statement in terms of the net weight alone is often of little practical value to purchasing decisions. For dietary supplements in unit form, FDA generally requires that declarations of net quantity be expressed in terms of net count, with statements of net contents in other forms being voluntary expressions.

With respect to food in conventional food form, only a few products (e.g., chewing gum) may express net contents in terms of only count. The agency solicits comments concerning whether it should require that declarations of net quantity of contents on dietary supplements in unit form include information concerning the amount of dietary ingredient in a unit of the supplement, as well as information in terms of count.

d. *Proposed § 101.235, tare.* The Handbook 133 portion of the 1994 Handbook defines ''tare weight'' as the weight of a container, wrapper, or other material that is deducted from the gross weight to obtain the net weight. With respect to other material that is deducted from the gross weight, regulatory officials have had differing opinions concerning whether food particles adhering to the container and liquids from the food absorbed in the container must be included in tare weight. Because of a lack of agreement in this area, Handbook 133 contains definitions of tare to accommodate all positions of the officials. Any of the definitions may be used with the gravimetric methods of analysis in Handbook 133, and significant variation in analytical findings may result from this flexibility.

Handbook 133 contains definitions for ''dry tare,'' ''dried used tare,'' and ''wet tare.'' ''Dry tare'' is defined as unused tare that comprises all packaging materials (including glue, labels, and ties) that contain or enclose a product, including prizes, gifts, coupons, or decorations that are not part of the product. ''Dried used tare'' is defined as used tare for which an effort is made to reconstruct the unused tare weight by removing the food from the tare by washing, scraping, wiping, ambient air drying, or other techniques involving more than ''normal'' household recovery procedures but not including such laboratory procedures as oven drying because oven drying can damage the tare material and result in invalid tare determinations. ''Wet tare'' is defined as used tare when no effort is made to reconstruct unused tare weight. For wet tare determinations, only readily separable food product is removed. Wet tare may include food particles that adhere to packaging materials, as well as fluids that may have been absorbed into these materials. As a result, free flowing fluids that have drained from the food may not be included in the net mass or weight of the food. With used wet tare, there is a significant possibility that there will be large variations in tare weight (Ref. 3). These variations may differ with the type of product, packaging materials (e.g., with absorbent packaging material), and handling and storage conditions. Additional variations in wet tare may be caused by the procedures used to determine wet tare, such as how long the product is allowed to drain before it is removed from the packaging and weighed.

NIST pointed out (Ref. 3) that these variations make it difficult for packers to set accurate fill levels because, in most cases, they must overpack to accommodate the largest possible wet tare determination that could be found with the product. Because of variations in wet tare determinations and the fact that dry tare is generally not available in sampling locations such as warehouses and retail stores, NIST recommended (Ref. 3) that FDA require that tare determinations be made with only dried used tare.

In response to NIST's recommendation, and in view of the fact that FDA has evaluated net contents declarations with dried used tare for many years, FDA is proposing in § 101.235(a) that only dried used tare be used in quantity of contents determinations. The agency is not proposing that unused dry tare be permitted because the agency is proposing these rules for national uniformity, and there may be some weight differences in the two types of dry tares from a variety of factors such as absorbed packing medium. The procedures that FDA is proposing for determining dried used tare are those that are currently set out in the 1994 Handbook. The agency considers them appropriate because they have been widely accepted by State and local regulatory agencies and industry for more than 30 years (Ref. 3).

With respect to how many tares must be weighed to determine the average tare that will be used in gravimetric procedures to determine the net contents, the Handbook 133 portion of the 1994 Handbook provides for 2 approaches for determining the average value. However, the 1994 Handbook permits only one of these approaches to be used. This approach is set out in ''Alternative Tare Procedures,'' in section 2.11.4., page 2–22 of Handbook 133, with modifications made by the 1994 Handbook.

The ''Alternative Tare Procedures'' involve a 2-stage procedure. An initial small tare sample size is weighed, and the variation within the individual packages of that initial sample is used to make a decision on how many additional individual packages must be weighed before calculating the average tare. The initial test is needed because tare weight can vary considerably from package to package (e.g., plastic buckets, glass bottles, and metal cans). If this tare variation is sizeable in comparison with the net weight variation, the net weights calculated for the sample packages can be erroneous.

[7] Section 5.1.3, page 5–3, of Handbook 133.

To minimize erroneous findings, the 1994 Handbook identifies values of ratios of the tare weight divided by the net weight that will ensure that no more than 5 percent of the gross weight variation results from variation in tare. (Before the 1994 Handbook revisions of Handbook 133 were made, the contribution of this variation in tare could be 25 percent of the gross weight. The contribution was limited because of concern that tare errors might influence the net weight results to too large a degree.) In some cases, where there is a large variation in package tare weights, all of the packages in the sample may have to be opened, and the average tare determined using the tare values for each of these packages.

NIST recommended that FDA adopt the 1994 Handbook procedures for determining the numbers of tare weights to be obtained (Ref. 3). Again, because FDA is not aware of any potential problems with these procedures, and because of NIST's expertise, FDA has tentatively decided to follow NIST's recommendation with respect to appropriate tare weight. Therefore, proposed § 101.235 (b) through (i) incorporates a procedure for determining fare weight that is modeled after the 1994 Handbook.

5. Compliance Procedures

As explained previously, the 1994 Handbook uses the ''Category A'' approach to ascertain conformance with net quantity labeling requirements. This approach has two aspects: Procedures for sample collection, and procedures for using the package characteristics of a sample to determine whether the inspection lot is violative. The sample collection aspect of the ''Category A'' approach, which was discussed earlier in this preamble, serves as the basis for FDA's proposed § 101.210. This section of the preamble pertains to the other aspect of the ''Category A'' approach, which may be characterized as ''compliance procedures.'' Compliance procedures minimize the number of case-by-case decisions by prescribing specific steps to determine whether the requirements for declarations of net contents have been met.

a. *Requirements pertaining to average package fills.* According to NIST (Ref. 3), the insistence in the 1994 Handbook that the average quantity of contents of the packages in a lot, shipment, or delivery be equal to or exceed the quantity printed on the label is the primary tool for protecting consumers. Most State and local regulatory actions result from this aspect of the 1994 Handbook (Ref. 3). The focus on the average quantity of contents provides good assurance that, while individual packages within an inspection lot may fluctuate, on a lot basis, consumers will receive the amount of food declared on the label (Ref. 3).

i. *Industry concern about average requirements.* The industry Task Force stressed that it is concerned about Handbook 133's focus on average quantity of contents because decisions about whether regulatory actions are warranted are usually made based on inspection lots. The Task Force argued that it is not appropriate to subject an inspection lot to regulatory action based solely on an average requirement because if this is done, it will not be possible to tell whether the problems found in an inspection lot are the result of underfilling or of the reasonable variations permitted for a production lot under section 403(e)(2) of the act. The Task Force stressed that, within each production lot, net contents will often rise above and fall below the declared net contents, but that the average net contents of the production lot will meet the declared net contents.

Given the fluctuations among packages, however, the Task Force said that inspection lots may not be representative of their larger parent production lots. The Task Force explained that inspection lots are generally small parts of much larger production lots. Because of distribution practices, the inspection lot usually represents an interval of production and not a random sample of the production lot. Thus according to the Task Force, the averaging out at the declared contents level that occurs in the production lot may not occur in the inspection lot.

The Task Force expressed particular concern over regulatory action based on very small inspection lots. The Task Force contended that net content examinations of inspection lots should be used primarily as ''audit tools,'' and that actions against an inspection lot should only be taken if a firm's quality control records show that there were problems with the production lot at the plant, or if access to such records is denied to regulatory officials.

The Task Force also argued that FDA should establish a statistically valid sampling variation allowance that is not reduced for small sample sizes. The Task Force explained that even package filling operations that comply with GMP cannot guarantee that each inspection lot with as few as 10 to 30 units will always have the same average net contents. The Task Force requested that a sampling variation allowance based on two standard deviations of the sample mean be applied to all in-plant, wholesale, and retail inspection samples.

ii. *NIST position on industry concern.* NIST maintained that it is fair to industry for regulatory agencies to follow the 1994 Handbook and to take regulatory action against inspection lots if they are found to be violative based on samples analyzed using the average requirement because of the mathematical approach that undergirds that requirement.

iii. *Mathematical approach.* The 1994 Handbook requires that a sample of the inspection lot be drawn from the entire inspection lot, using random selection procedures. Such procedures are necessary if a reliable mathematical evaluation of net contents findings is to be made. Random selection of the sample means that, using the net contents of the individual packages in the sample, it is possible to derive a reliable picture of the range of possible average net contents values for the inspection lot. The range of possible average net contents values will be correct 97 or more times out of 100 (or, in statistical terms, with 97 or more percent confidence).

The 1994 Handbook uses the range of possible average net contents values for the inspection lot to estimate the uppermost average package error that could be present in the inspection lot with 97 or more percent confidence. (As explained previously in this document, the package error is the difference between the measured net quantity of contents and the labeled quantity on the package.) If the package error calculated using the 1994 Handbook is less than 0, it would mean that the net contents of a significant number of packages in the inspection lot would not meet the declared net contents, and that inspection lot is violative.

Under the 1994 Handbook, the range of possible average net contents values for the inspection lot is calculated by: (1) Determining the net contents of all individual packages in the sample; (2) Determining the package errors for all of the individual packages in the sample (again, the package error is the difference between the measured net quantity of contents and the labeled quantity on the package); (3) Determining the average package error for the sample; and (4) Determining the range statistic, that is, a value that, when combined with the average package error for the sample (by addition to and subtraction from this error), will be used to make a reliable estimate of the range (i.e., the difference between the greatest and smallest values) of average package error values that may be present in the inspection

lot. The range statistic, is determined by: (a) Determining the standard deviation (s) of package errors within the sample (s is a statistic used as a measure of dispersion (i.e., differences of individual values from the mean) in a sample); (b) Selecting from a mathematical table (found in Column 2 of Table 1 in proposed § 101.240) the appropriate statistic that will be used to account for the number of individual packages in the sample. There is a 97 percent confidence incorporated in the estimate of the range of possible variations of average package error within the inspection lot. (Any estimate of the range of possible variations in average package error within the inspection lot using the average package error of the sample will vary with the sample size because the reliability of such an estimate is greater as more individual measurements are made. The 1994 Handbook refers to the statistic that it uses to account for sample size and the desired confidence as the ''Sample Correction Factor'' (SCF). The SCF gets larger as the sample size gets smaller. For the SCF values in Table 1 of proposed § 101.240, the level of desired confidence for estimates about the inspection lot is that they be correct 97 or more times out of 100 (or, in statistical terms, with 97 or more percent confidence). (The 97 percent confidence aspect of the SCF statistic is consistent with Task Force requests for a sampling variation allowance based on two standard deviations of the sample mean.); and (c) Multiplying ''s'' by the appropriate SCF to determine the range statistic, that is the sample error limit (SEL). The SEL is a statistical value that allows for the uncertainty between the average error for the sample and the average error for the inspection lot.

The 1994 Handbook uses the SEL to estimate the uppermost average package error that could be present in the inspection lot with 97 or more percent confidence. This package error is determined by adding the SEL to the average package error of the sample. If this uppermost average package error in the inspection lot is less than 0, the 1994 Handbook, as stated above, classifies the inspection lot violative.

iv. *Fairness of the 1994 Handbook approach.* To illustrate fairness in the 1994 Handbook's approach to reasonable variations in the average net quantity of contents in the inspection lot, NIST referred to a number of hypothetical sampling situations with varying sample net weights (Ref. 3). All of these situations pertained to inspection lots with a total declared net weight of 48 oz (3 lb) and with varying package errors within a sample size of 12 individual packages. NIST advised that because it used a computer for all of its calculations in these situations, the formula it used for determining the standard deviations of the package errors in each of the situations was $s=(\sum(x_i-x)^2/(n-1))^{1/2}$.

Situation A: Inspection lot size: 250 packages

Package error range: 3 oz (−1.5 oz to +1.5 oz)

Package errors among the 12 packages within the sample: +1, −1.5, +0.5, −1, +1, −1.5, −1.5, −1, +0.5, −1.5, +1.5, −1.5

Average package error: −0.42 oz

Calculation of SEL

Standard deviation (s): 1.203 sample correction factor (SCF) for sample size of 12 from Table 1, § 101.240: 0.5774 SEL=1.203×0.5774=0.69 oz

Compliance Status of Inspection Lot

Avg package error + SEL=−0.42+0.69=0.27 oz 0.27 meets the 0 or greater criterion discussed above, so the lot is in compliance

Permitted Reasonable Variations in Package Errors

Estimation of Allowance for Reasonable Variation Range Within Inspection Lot = sample avg package error ± SEL=−0.42 oz ±0.69 oz=−1.11 oz to 0.27 oz

Permitted Reasonable Variations in Average Net Weight

48 oz−1.11 oz to 48+0.27 oz=46.89 oz to 48.27 oz

Maximum Percent Shortage Within Reasonable Variations

1.11 divided by 48×100=2.3%

Situation B: Inspection lot size: 250 packages: Package error range: 0.16 oz (−0.17 oz to −0.01 oz) (note that all errors are negative). Package errors among the 12 packages within the sample: −0.17, −0.01, −0.01, −0.01, −0.01, −0.01, −0.01, −0.02, −0.01, −0.02, −0.01, −0.01. Average package error: −0.02 oz

Calculation of SEL

Standard deviation (s): 0.0458 SCF for sample size of 12 from Table 1, § 101.240: 0.5774 SEL=0.0458×0.5774=0.03 oz

Compliance Status of Inspection Lot

Avg package error + SEL=−0.02+0.03=0.01 0.01 meets the 0 or greater criterion, so lot is in compliance

Permitted Reasonable Variations in Package Errors

Estimation of Allowance for Reasonable Variation Range Within Inspection Lot = sample avg package error ± SEL=−0.02 oz±0.03 oz=−0.05 oz to 0.01 oz

Permitted Reasonable Variations in Average Net Weight

48 oz−0.05 oz to 48+0.01 oz=47.95 oz to 48.01 oz

Maximum Percent Shortage Within Reasonable Variations

0.05 divided by 48×100=0.10%

Situation C: A small inspection lot, all of which is included in the sample, with mixed production codes (such as those often found in retail marketplace). Inspection lot size: 12 packages. Package error range: 1.49 oz (−1.5 oz to −0.01 oz) (note that all errors are negative). Package errors among the 12 packages within the sample: −1.50, −0.19, −0.5, −0.09, −1.40, −0.03, −0.01, −0.02, −0.01, −0.01, −0.01, −0.02 Average package error: −0.32 oz

Calculation of SEL

Standard deviation (s): 0.5448 sample correction factor (SCF) for sample size of 12 from Table 1, § 101.240: 0.5774 SEL=0.5448×0.5774=0.32 oz

Compliance Status of Inspection Lot

Avg package error+SEL=−0.32+0.32=0.00 0.00 meets the 0 or greater criterion, so lot is in compliance

Permitted Reasonable Variations in Package Errors

Estimation of Allowance for Reasonable Variation Range Within Inspection Lot=sample avg package error ±SEL=−0.32 oz±0.32 oz=−0.64 oz to 0.00 oz

Permitted Reasonable Variations in Average Net Weight

48 oz−0.64 oz to 48+0.00 oz=47.68 oz to 48.00 oz

Maximum Percent Shortage Within Reasonable Variations

0.64 divided by 48×100=1.3%

NIST stated (Ref. 3) that these illustrations disclose that the foundation of the 1994 Handbook's approach to permitting reasonable variations in the average net quantity of contents lies in its evaluation of the significance of the standard deviation (s) of package errors within the sample.

For small inspection lots (about which the Task Force expressed the greatest concern), NIST stated (Ref. 3) that the 1994 Handbook's approach provides sufficient allowance for the variations that are likely to occur.

NIST advised that the Situation C illustration demonstrates that there is little foundation to industry's concern that small inspection lots are at a significant disadvantage under the 1994 Handbook. NIST explained that the 1994 Handbook includes, as requested by the Task Force, an SEL that is not reduced for small sample sizes. NIST stated that the approach that is reflected in proposed § 101.210 provides for collection of smaller sample sizes for smaller inspection lots (e.g., 12 individual packages for an inspection lot of 250 packages versus 48 individual packages for an inspection lot of more than 3,200 packages). As stated above, smaller sample sizes result in larger SCF's and, in turn, in larger SEL's. The larger SEL's permit greater adjustment of the average sample net quantity of contents before application of the 0 or greater criterion for the average sample package error that is discussed above. As a result, it is more likely that a small inspection lot with an underweight average will be accepted than that the lot will be rejected.

NIST pointed out (Ref. 3) that because those firms that pack with greater variability from a variety of sources, including poor quality control, will get larger correction allowances than firms packing with smaller variability, firms with poor quality control might get undue benefit from the 1994 Handbook approach to calculating the SEL. However, NIST advised also that it knows of no way to prevent larger allowances under such circumstances. FDA solicits comments about alternative approaches that might prevent a firm from taking advantage of the proposed allowances. In the absence of contrary information, however, FDA's tentative view is that abuse of the approach in the 1994 Handbook would not be likely because firms have far more to gain from savings from better quality control of product filling practices than from a larger SEL.

Further, NIST pointed out that the Situation C illustration demonstrates that small lots are likely to be permitted reasonable variations from inclusion of different manufacturing codes in the inspection lot. NIST explained (Ref. 3) that including of multiple manufacturing codes in the same inspection lot significantly increases the chance of an inspection lot sample having a larger standard deviation than would occur with a single code because different codes are generally packaged at different times and possibly by different filling machines. Differing codes may well mean that portions of the inspection lot were packaged days, weeks, or even months apart. Under such circumstances, there is an increased likelihood that differences in filling practices cause larger variability between individual fills within the packages included in the sample, thereby driving the standard deviation upward with a corresponding increase in the SEL.

NIST points out, however, that the 1994 Handbook's manner of calculating SEL, which provides for reasonable variations for small inspection lots, is not consistent with well recognized academic approaches to determining appropriate sampling variation allowances. Such academic approaches (Ref. 9) provide that the size of the sampling variation allowance be reduced as the percent of the lot that is sampled is increased. For example, when inspection lots are 100 percent sampled, the SEL would always be 0. However, under the 1994 Handbook, the SEL would rarely, if ever, be 0. As a result, the 1994 Handbook provides for significant sampling variation allowance. In the previously discussed Situation C illustration, the SEL of 0.32 oz would mean that a sample with every package fill below the labeled package fill would be classified as in compliance.

However, NIST advised that large permitted variations in small inspections lots are not inconsistent with consumer protection because where any but the smallest shipments are involved, there would be little practical impact on the SEL reduction. For example, the SEL is reduced by only 5 percent with inspection lots of 125 units and, with inspection lots of 3200, the SEL is reduced by only 1 percent (Ref. 3). Accordingly, FDA tentatively concludes that this inconsistency with academic approaches should not affect its decision to propose the 1994 Handbook approach for determining the SEL. FDA suggests, however, that regulatory officials should attempt to collect samples from the largest inspection lots practicable to minimize the impact of the large variations that are permitted in small inspection lots.

For large inspection lots, fairness under the 1994 Handbook's approach results primarily from the way the SEL reduces the probability that nonviolative lots will be rejected. Furthermore, the 1994 Handbook restricts violative findings to the inspection lot, even where arguments could be made for broader applicability. For example, NIST has pointed out (Ref. 3) that if the inspection lot is found to be in violation after application of the SEL, and if the inspection lot is composed or made up of packages randomly selected from the entire production lot, then there is every reason to believe that the production lot as a whole was in violation. However, NIST advises that the 1994 Handbook does not suggest regulatory action against the production lot under such circumstances. NIST stated that restraint under such circumstances further illustrates that it is not unfair to industry to base regulatory action on inspection lots.

v. *Practicability.* NIST maintained (Ref. 3) that it would be impracticable for regulatory attention to be focused on the production lot instead of the inspection lot. NIST explained that the designation of the production lot may be artificial because it is, in fact, often only a segment of continuous production. The segment may be large or small, depending upon whether the packager uses more than one code during a day. NIST advised that in the United States, the only restriction on the definition of the production lot for net contents purposes is one established by USDA for meat and poultry products. Meat and poultry package production lots can consist of no more than 8 hours' production. Generally, however, the definition is left entirely to the manufacturer or may be dictated by other considerations (such as tracing batches of ingredients that are susceptible to spoilage or contamination). In the European Union, by contrast, a production lot is defined as no more than 10,000 packages (Ref. 10).

In addition, it is not unusual for U.S. firms to be shipping packages from a given production lot out of a plant while more packages from that same lot are still being produced. Thus, according to NIST (Ref. 3), it is common not to be able to sample from an entire production lot, even when the sample is taken at the packaging location. Therefore, if actions were to be taken only against production lots, NIST suggested that it would be necessary to circumscribe what would constitute a production lot. Also, it would be necessary that the lot be held for some period of time, so that regulatory officials would have an opportunity to take a random sample of the entire production lot.

vi. *FDA's tentative position about industry concern.* FDA points out that the language of section 403(e)(2) of the act charges the Secretary of Health and Human Services and, by delegation,

FDA with the responsibility of ensuring that food packages have an ''accurate'' quantity of contents declaration, but that the act states also that reasonable variations shall be permitted. The first aspect of section 403(e)(2) protects consumers from being misled about package net contents and facilitates retail value comparisons. The second aspect protects industry by making clear that this requirement is to be enforced in a reasonable manner. Neither aspect of this provision is subordinated to the other. Thus, the agency must attempt to strike an appropriate balance between the interests of consumers and of industry in any approach to enforcing section 403(e) that it adopts.

As previously discussed in this preamble, FDA has tentatively concluded that the diversity in approaches to enforcement of net contents declaration labeling requirements on foods among State and local regulatory agencies has created significant burdens on interstate commerce. Firms shipping a product to several States must overfill their products to meet the most stringent State's requirement. Some adjustment in the balance between consumer and industry interests in net contents declarations is therefore necessary to alleviate the burden on industry that is produced by this diversity in approaches.

Further, to the extent that FDA identifies in its regulations what are ''reasonable variations'' under section 403(e)(2) of the act, the affected industry will be in a better position to judge at what point contents deviations are likely to be considered violative. Such knowledge should help firms reduce overfilling of packages and should facilitate interstate commerce by making the establishment of more uniform target fill levels practicable for all package sizes. Also, consumers will be better informed about the amount of food that they are purchasing.

FDA does not agree, however, that net content examinations of inspection lots should be used only as ''audit tools.'' The agency is not persuaded that there is an inequity to the affected industry from a regulatory approach that focuses on the inspection lot when it is an increment of a much larger production lot. FDA tentatively finds that NIST has presented persuasive evidence that the mathematical approach in the 1994 Handbook is fair when used on inspection lots of all sizes. Thus this approach together with the large individual package variations permitted by the large MAV's, permits reasonable variations in the average net quantity of contents. FDA is not aware of any Federal, State, or local regulatory officials that have ever attempted to follow the production lot regulatory approach that is suggested by the Task Force. Most State regulations require that the average of the ''lot, shipment, or delivery'' meet or exceed the labeled net contents (Ref. 3). In practice, all inspection agencies at Federal, State, and local government levels, including FDA, inspect what is available for inspection and do not determine what might have originally comprised the shipment or delivery. Even where the same production lot codes are inspected at the manufacturing plant, inspection agencies focus only on the compliance of the packages from which the sample was taken, not whether the production lot complied. This focus is necessary because the sample will not necessarily be taken from the entire production lot. For example, as NIST pointed out, a production lot may take hours to package, and shipments of the earliest packaged portions of that production lot may be shipped before the entire lot has been packaged. Thus, the entire production lot may not be available for inspection.

FDA therefore tentatively concludes that it is appropriate for regulatory action to be based solely on evaluations of inspection lots. The agency tentatively concludes that acting on this basis is the only practicable way of providing meaningful levels of consumer protection from net quantity violations. It would not be practicable to require that industry hold a production lot for a specified period of time. Such a requirement would likely be a significant hardship for firms, who frequently must fill orders without delay. Without such a requirement, however, focusing on the production lot could not provide any consumer protection because such lots will likely be distributed before the agency has an opportunity to examine it.

vii. *Proposed compliance procedures; average requirements.* Accordingly, FDA is proposing in § 101.240 to adopt the 1994 Handbook Category A compliance procedures for average net contents requirements. Most aspects of the proposed compliance procedures are taken directly from the 1994 Handbook, although FDA has made a number of nonsubstantive changes for clarity and brevity. The proposed provisions identify specifically when inspection lots are to be classified as violative because of average package errors in weighing, measuring, or counting. Again, the package error is the difference between the measured net quantity of contents and the labeled quantity on the package.

As proposed, § 101.240 provides step-by-step instructions on how to calculate the average package error, and, when this average error is a negative value, how to make adjustments in the average error to determine whether the error is sufficiently large to cause the inspection lot from which the sample is taken to be considered violative. Two adjustments in the average error are provided for in § 101.240. One adjustment involves calculation of the standard deviation and using that value to calculate, as discussed above, the highest possible estimate of average net contents within the inspection lot.

The other adjustment in the average error involves making an allowance for moisture loss that may have taken place in the samples selected for measurement (proposed §§ 101.240(b)(2) and 101.250). FDA is proposing in proposed § 101.250 to identify the extent to which moisture loss affects these violative findings. Under proposed § 101.240(b)(2), the appropriate moisture allowance provided for the specific food in § 101.250 is added to the average package error after it has been adjusted by the SEL.

viii. *Exemption from average requirements.* NIST has advised FDA (Ref. 3) that, for statistical reasons, the compliance of an inspection lot containing packages labeled in terms of count of 50 items or less should not be based on a determination of an average count. NIST stated that their statisticians have advised them that normal distribution does not reliably occur until counts exceed 50. NIST explained that many packages labeled by count, for example, ''10 sticks'' of gum, do not have a normal distribution around a mean value. This failure derives from the fact that there are either 10 sticks in a package of gum, or there are fewer than 10 sticks (no matter how rarely this might occur). The package is constructed such that it cannot hold 11 sticks. Because only negative package errors can occur, it will not be possible to obtain an average net contents meeting the declared net contents where any shortage in net contents is present.

After the count exceeds 50 units, however, there is no reason for package construction to prevent positive package errors, and average package counts may reasonably be expected to meet labeled packaged counts. For these reasons, FDA is proposing an exemption in the first sentence of § 101.240 for packages labeled with net contents declarations of 50 or less units from average net contents requirements. (The agency is proposing to exempt packages with a declaration in terms of count that are

subject to proposed § 101.245(e) from the average requirements of proposed § 101.240. Proposed § 101.245(e) imposes requirements for declarations in terms of count where the declaration is 50 items or less.)

In view of the fact that an average requirement would not be appropriate for packages labeled in terms of a count of 50 units or less, and the fact that MAV's are relatively crude measures of unavoidable deviations, FDA is concerned that some compliance criterion be included in these regulations for such packages to provide adequate consumer protection.

NIST pointed out (Ref. 3) that the 1994 Handbook contains a unique approach for dealing with this problem,[8] and that this approach is valid even though packages may not be subject to package errors. For all sample sizes, the 1994 Handbook contains specific limits on the number of packages in the sample that may have any shortage. The limits are: (1) For samples of 2 through 12 packages—no more than 1 package, (2) For samples of 24 packages—no more than 2 packages, and (3) For samples of 48 packages—no more than 3 packages.

NIST suggested that FDA adopt the 1994 Handbook's approach to this problem. The presence in the Handbook 133 portion of the 1994 Handbook of the same specific limits on the number of packages in the sample that may have any shortage in count indicates that the suggested approach is an accepted means of providing consumer protection where net contents are in terms of count, and the declared count is 50 or fewer units. Its presence in Handbook 133 also evidences a long history of use of the limits by State and local regulatory agencies. Thus, FDA has incorporated the suggested compliance criteria into the proposed regulation. Because the proposed compliance criteria do not address average fill requirements, FDA is proposing to include them in § 101.245(e), the section pertaining to the procedures for individual packages, rather than in § 101.240, the section pertaining to compliance procedures for average fills. FDA requests comment on this proposed approach.

b. *Requirements pertaining to individual package fills.* As mentioned above, the 1994 Handbook provides that the variation of individual package contents below the labeled quantity may not be ''unreasonably'' large. The handbook identifies ''unreasonably'' large errors through MAV's, and the handbook contains MAV's for a wide variety of package sizes.

NIST advised FDA (Ref. 3) that it developed the MAV's for NCWM in the 1970's based on net contents tests of thousands of samples of common package sizes of food and nonfood items that were labeled primarily by weight, volume, or count. The tests were made only on inspection lots whose average net contents equaled or exceeded the labeled net contents because NIST believed that such lots were more likely to have been packaged under GMP than lots with average net contents below the declared weight. NIST wanted to identify MAV's from data generated using packages prepared in accordance with GMP to avoid development of unreasonably lenient individual compliance criteria. NIST looked for identifiable correlations between the package sizes and amount of variation from labeled net contents. NIST found no such correlations, noting only that the percent variation from labeled contents appeared slightly larger with smaller package sizes than with larger package sizes.

In view of the lack of significant identifiable correlations, NIST developed MAV's based on the data available for each specific package size tested. For each size, a variation was derived that would be an MAV that would encompass the largest variation below the labeled quantity that an individual package might be expected to have 99 percent of the time. The specific derivation of these MAV's was complex, but NIST developed them in a manner that may be closely compared to the procedure of prohibiting only those deviations that are 3 standard deviations or more below the labeled quantity (see previous discussion of standard deviation). NIST acknowledged (Ref. 3) that development of MAV's in this manner resulted in crude measures of unavoidable deviations, but it stressed that such measures provide some uniform control for unreasonably large individual deviations. NIST stressed that such control is preferable to no control or to case-by-case evaluations of the acceptability of each large individual deviation. NIST also pointed out that the crude nature of MAV's is offset by the fact that the primary tool for protecting consumers in the 1994 Handbook is the principle that the average net contents in the sample must meet or exceed the label declaration.

NIST recommended (Ref. 3) that FDA propose to adopt the MAV's in the 1994 Handbook. One State agency, however, asserted that Handbook 133 MAV's are too lenient, and that FDA should adopt more stringent (i.e., smaller) values for the MAV's. The State submitted a list of smaller MAV values for consideration but did not provide evidence that these MAV's were developed using data collected on a national basis, or that the suggested values represent current packaging practices.

FDA has considered that the original data on which NIST based its MAV values were collected in the 1970's, and that packagers have become more sophisticated in their ability to reduce packaging variations. The agency recognizes that because MAV's are crude measures of unavoidable deviations, it would be best if MAV's could be revised in accordance with current technology in the food industry. However, limited resources prevent FDA from undertaking the extensive studies needed to do so at this time. Moreover, FDA does not believe that it is appropriate to propose the tighter MAV's submitted by the State regulatory agency in view of the lack of evidence that these MAV's would prove practicable on a national level.

Further, FDA points out that the 1994 Handbook does, to some degree, make the MAV's more stringent than they were in Handbook 133 before the 1994 revisions. Before the 1994 revisions, Handbook 133 permitted differing numbers of units to exceed the MAV's, depending upon the sample size, before the product was deemed out of compliance. The permitted numbers varied from 0, for samples consisting of 30 or fewer units, to 7, for samples consisting of 250 units. Handbook 133 provided that sample sizes of 50 units were permitted 2 MAV's. The 1994 Handbook permits no more than 1 MAV for the largest sample sizes of 48 units. Thus, the 1994 Handbook decreases by at least 50 percent the maximum number of MAV's permitted to be found in a sample.

Accordingly, the agency is proposing in § 101.245(f), consistent with the recommendation of NIST, to adopt the MAV's in the 1994 Handbook. However, the agency is not proposing MAV's for count for packages with 50 or fewer units because, as pointed out by NIST, such MAV's would serve no practical purpose. For such packages, as discussed previously, FDA is proposing in § 101.245(e) that, if more than 1 package from a sample of 12 or less contains less than the labeled count where the inspection lot size is 250 packages or less; if more than 2 packages from a sample of 24 packages contain less than the labeled count where the inspection lot size is between 251 to 3200 packages; or if more than 3 packages from a sample of 48 packages contain less than the labeled count

[8] See section 5.2, page 54, Handbook 133.

where the inspection lot is more than 3200 packages, the inspection lot be classified as violative.

c. *Proposed compliance procedures; individual requirements.* As explained above, FDA is proposing in § 101.245, to adopt the 1994 Handbook Category A compliance procedures for individual weight requirements. FDA has taken most aspects of the proposed compliance procedures directly from the 1994 Handbook. However, the agency has made a number of nonsubstantive changes for clarity and brevity.

As proposed, § 101.245 provides step-by-step instruction on how to determine the appropriate MAV for the labeled net quantity of contents using the appropriate table § 101.245(f) (i.e., Tables 1 and 2 for mass or weight, Tables 3 and 4 for liquid or dry volume, and Table 5 for count except where the count is 50 units or fewer, where MAV's are not applicable). Where there are any negative package errors and moisture loss adjustments that are provided for in § 101.250, the errors are adjusted with the appropriate allowance for that food by adding the allowance to each of the negative errors. For example, if the labeled package size on a package of frozen fruit is 2 lb, and a 1-percent moisture loss allowance is permitted under § 101.250, the MAV of 0.07 lb from Table 2 is increased by adding 0.02 lb to give an adjusted MAV of 0.09 lb.

Once the MAV is determined, proposed § 101.245(d) identifies those situations in which the occurrence of package errors larger than the MAV cause the inspection lot to be violative. Where an inspection lot is sufficiently small that under proposed § 101.210(b), the sample consists of less than 48 individual packages, proposed § 101.245(d)(1) provides that the sample is violative if it contains any negative package errors that exceed the MAV or adjusted MAV, as appropriate, for the labeled net quantity of contents. Where an inspection lot is sufficiently large that under proposed § 101.210(b), the sample size consists of 48 individual packages, proposed § 101.245(d)(2) provides that the sample is violative if it contains more than 1 negative package error that exceeds the MAV or adjusted MAV, as appropriate, for the labeled net quantity of contents. As explained previously in this preamble, the agency is proposing limits on individual package fills for packages with declarations of net quantity in terms of count that have 50 or fewer units in lieu of average net quantity requirements. Because these limits are more stringent than any MAV limits would be, no practical purpose would be served by identifying MAV's for such packages. Consequently, the agency is proposing in § 101.245(d)(1) that such packages be exempt from the above violative MAV criteria.

d. *Impact of compliance procedures on existing policy.* FDA intends that the procedures that it adopts as a result of this rulemaking, if any, will supersede FDA's CPG 562.300 (formerly CPG 7120.19), which directs FDA field personnel to consider regulatory action where the average contents of the subsamples is 1 percent or more short weight. FDA intends to revoke the CPG at the time that it publishes a final rule in this proceeding.

e. *Section 101.250, moisture loss*—i. *Background.* As mentioned previously in this preamble, current FDA regulations permit reasonable variations for moisture loss but do not define limits for such variations. The agency has tried to deal with the issue of how to define the limits on variations for many years. FDA's Quantity of Contents Compendium contains the results of studies that date back to the early 1940's to determine variations because of moisture loss.

The agency attempted to use information from its moisture loss studies to establish limits for moisture loss in its 1980 proposal (45 FR 53023, August 8, 1980). However, there was considerable opposition to that proposal. Comments objected because the proposed moisture loss allowances were for only a small number of food classes, because it would be very time-consuming and expensive to develop data to justify new allowances, and because firms would have to overfill packages until rulemaking was completed. There was also concern that any specific maximum moisture loss provision might be taken by the dishonest manufacturer as a license to underfill down to the ''legal'' limit. Because FDA was concerned that there were significant problems with the regulation that it proposed, and that there could be considerable adverse economic impact on the affected industry, the agency did not issue a final rule in this matter.

In 1988, NCWM attempted to deal with this issue on a product by-product basis by including in Handbook 133 its ''gray area'' approach. Under this approach, any product found short weight in excess of the ''gray area'' limit would be subject to legal action. If the product is found short weight but within the ''gray area'' limit, the inspecting agency would take additional steps (such as comparing of laboratory moisture determinations at the time of sampling and at the time of pack from quality control records) to determine whether the product is short weight because of underweighing at the time of pack or because of ''reasonable'' moisture loss that occurred during distribution.

The 1994 Handbook includes ''gray area'' limits for two foods regulated by FDA—flour and dry pet food (hereafter referred to as ''dry animal food''). For both products, the ''gray area'' limit is 3 percent. NIST advised FDA (Ref. 3) that NCWM considered two approaches in developing these limits. Under one approach, products would be permitted the maximum loss that could be expected to occur throughout the shelf life of the product. Under the other approach, which was the one ultimately adopted by NCWM, a lower, negotiated limit would be established. For example, some studies in dry regions of the United States showed that flour and dry pet food lose from 6- to 9-percent moisture on store shelves. In more humid regions of the United States, some studies showed that these products lose from 1- to 2-percent moisture. NIST advised that the 3-percent limits that were ultimately set by NCWM were supported by the pet food industry through the Pet Food Institute and the flour industry through the Millers National Federation.

FDA agrees with the NCWM approach of establishing a limit on cognizable moisture loss somewhere between the maximum loss and the minimum loss that occurs throughout the shelf life of the product. It would not be practical to establish a multiplicity of limits to reflect the humidity swings that occur in the different parts of the United States throughout the seasons and from year to year. Also, it would not be fair to consumers in more humid areas of the country to establish limits based on losses in the driest areas of the country (where the largest moisture losses generally occur) because large allowances for moisture loss would be provided where very little losses would occur given the high humidity. The NCWM approach represents a rational approach for dealing with moisture loss in all areas of the United States. It provides reasonable, but not total, relief to the affected industry.

Even though FDA sees considerable merit in the ''gray area'' approach in the 1994 Handbook, the agency does not believe that it would be practicable for it to adopt this approach. The agency does not have authority under the act to obtain the quality control records at the point of pack to determine whether underweighing actually takes place. Moreover, limits for only two foods have been established. Even though, as

NIST has advised, limits are being developed for rice and pasta, there are simply too few limits established for foods subject to moisture loss for this approach to be viable at this time. Accordingly, FDA is not incorporating the ''gray area'' approach into this proposal.

ii. *The Proposed approach.* While FDA and some State and local agencies attempt to make case-by-case allowances for variations in moisture loss, other State and local agencies take the position that no allowances are permitted because FDA has not provided specific guidance concerning appropriate allowances. Even though the latter position is arguably not consistent with section 403(e)(2) of the act, it is not uncommon for regulatory agencies to employ it (Ref. 3). In large measure, the regulated industry appears to have decided not to contest the lack of allowances for moisture where agencies have chosen not to permit such allowances. Thus, firms shipping foods subject to moisture loss to jurisdictions that do not make allowances for such loss may be incurring significant costs from overfilling, or they may be being subjected to regulatory action. Based on these facts, FDA tentatively concludes that the current case-by-case approach to providing moisture loss variations has not produced the type of consistent results that are necessary to facilitate interstate commerce.

Although the regulated industry objected to FDA's 1980 attempts to define reasonable variations for moisture loss, in view of the above problems, industry response may be more positive if a more practicable approach is presented. FDA has therefore revisited the possibility of defining these variations and concluded that it should again propose to define what would constitute a reasonable variation but with significantly more flexibility than it proposed in 1980.

FDA's tentative view is that it is appropriate and practicable to establish a regulatory approach for net contents declarations that is tied to whether the inspection takes place at the point of manufacture or at some other location. For inspections at the point of manufacture, the agency is proposing that measurements be made of the accuracy of the net contents declaration. Because inspections at the point of manufacture would mean that there was no opportunity for any moisture loss to have taken place, no allowance for moisture loss would be provided. Such inspections would deter firms from underfilling to the extent of the allowances that FDA is proposing to establish for inspections that occur outside the plant.

The agency is proposing to establish moisture loss allowances, similar to those established by NCWM for flour and dry animal food, that reflect available moisture loss information. The allowances will serve to guide all affected parties about maximum permissible moisture losses. State and local regulatory agencies will be able to use these allowances in conducting inspections at both retail and wholesale marketplaces. These allowances will provide both the regulatory agencies and the industry with objective standards for determining whether an inspection lot is violative. Thus, this two pronged approach, which uses standards tied to the place at which the inspection occurs, will protect both consumers and the regulated industry.

iii. *At point of pack.* FDA tentatively concludes that, as a general rule, no allowance for moisture loss is reasonable at the point of manufacture. Clearly, at the time that products come off the production line, the contents declaration should be accurate. At that time, regulatory officials may reliably determine whether firms are attempting to take undue advantage of any moisture loss allowance that has been established.

However, regulatory officials may often encounter product at the point of pack that has been stored before shipment to other locations. The agency recognizes that allowances for moisture loss are appropriate after some period of storage. In view of the multiplicity of foods that may be subject to moisture loss and the agency's limited resources, however, it would be difficult for FDA to establish minimum storage times for each commodity before moisture loss might affect the contents measurement.

FDA asked NIST how other regulatory agencies have resolved this problem. NIST advised the agency that a number of European countries permit no moisture loss within the first 7 days following the end of the date of pack (Ref. 3) and recommended that FDA adopt a similar approach. Because NIST believes that this European approach has merit, the agency has provided in the proposed § 101.250(a)(1) that no allowance for moisture loss will be made if the food (other than a fresh bakery product for reasons discussed subsequently in this preamble) is weighed within 7 days following the end of the day of pack.

However, a number of comments on the 1980 proposal pointed out that fresh bakery products may suffer moisture loss within a very short time after production, and that such products often have a short shelf life (often as little as 3 to 5 days). As a result, FDA tentatively concludes that fresh bakery products should not be subjected to the 7-day no moisture loss rule at point of pack. The agency is therefore proposing to permit no moisture loss only within 1 day following the end of the day of pack for fresh bakery products in § 101.250(a)(2). Bakery products other than fresh baked breads, buns, rolls, and muffins will, as proposed, be subjected to the 7-day no moisture loss rule at point of pack. The agency solicits comments about the impact of proposed § 101.250(a)(2) for bakery products.

In proposed § 101.250(b), FDA is providing that after one day, fresh baked breads, buns, rolls, and muffins would still be in compliance if they lost 1 percent of their moisture. This allowance is based on data submitted in response to the 1980 proposal.

In proposed § 101.250(c), FDA is permitting a 3-percent moisture loss for these products after 7 days following the end of the day of pack. This proposed allowance is based on the data available from NIST (see discussion below). FDA is proposing to permit a similar moisture loss for dry animal food (see § 501.105(g)).

NIST advised that there may be many other foods that also suffer moisture loss within very short time periods after production, and that such products also have a short shelf life. Further, NIST advised that the 1-day period may be too rigid for some fresh bakery products. NIST was not able to identify these products but did suggest an alternative approach that it considered practicable and that could justify allowance of moisture loss on a more specific product basis at the point of pack or any other storage location. The approach that NIST suggested involved moisture loss data collection at the manufacturing plant followed by storage for specific time periods in specific locations and by measurements of the net quantity of contents (Ref. 3).

According to NIST, the collection could take place on a daily basis under environmental conditions similar to those that exist where the packages under inspection are stored (e.g., if the product is typically placed in a sealed case on a pallet and shrink wrapped, the control lots would be stored under those conditions, rather than under laboratory conditions). NIST suggested that the data be based on at least 3 control lots, with each lot consisting of at least 12 randomly selected individual packages that are collected on the same day, and consisting of at least 48 randomly selected individual packages in the 3 lots combined. NIST advised that

individual packages should be weighed upon collection and then daily (or hourly in the case of rapid dramatic moisture loss) throughout the duration of the study. The moisture loss allowance should be calculated with a 97-percent level of confidence.

NIST pointed out also that where moisture loss varies with climatic changes in environmental conditions, the data should be collected at an appropriate time to justify a finding of moisture loss. For example, where an inspection is made of current production at a food processing plant in the middle of July, and moisture loss varies significantly from winter to summer, data collected in January cannot be relied on to establish or calculate moisture loss during the inspection.

FDA agrees that the proposed rule should permit firms to gather justification for more specific moisture loss allowances where firms believe that it would be in their best interest to do so. Accordingly, FDA is proposing in § 101.250(d) to permit firms to determine more specific allowances in the manner suggested by NIST. As proposed, these allowances would not be limited to the point of pack if firms wish to gather data to demonstrate that allowances are justified at other locations. FDA is proposing that the data to support an allowance be gathered in the manner suggested by NIST and described above.

iv. *Other than point of pack.* FDA has reexamined all old moisture loss data that it has collected to determine which commodities may be subject to moisture loss and the amount of loss that might be expected. Most of this data appears in FDA's Quantity of Contents Compendium (Ref. 11) which contains a variety of data collected from the 1920's through the 1970's. The agency also consulted with NIST about which commodities have come to the attention of State and local agencies because of moisture loss. Moisture loss has been identified with flour, pasta, rice, cheese and cheese products, dried fruits and vegetables, fresh and frozen fruits and vegetables, coffee beans, and bakery products (Ref. 3). Of all of these commodities, the extent of moisture loss variations is best known for flour. In fact, very little is known about the extent of moisture loss for most of the other commodities. However, because of NCWM's work, considerable reliable data support an allowance limit of 3 percent for flour (as well as dry animal food) (Ref. 12).

For other commodities, data are considerably less dependable, either because of the age of the studies for the commodities or because of the limited scope of the studies. In its 1980 proposal, FDA proposed to establish an allowance of 1 percent for frozen fruits and frozen vegetables in certain packaging based on data in the Quantity of Contents Compendium. NIST advised (Ref. 3) that representatives of the frozen food industry believe that a 1-percent allowance for that industry is reasonable. Also, a comment on the 1980 proposal from a trade association representing the bakery industry stated that fresh bread, buns, and rolls are subject to a moisture loss of only about 1 percent. FDA is therefore proposing a new § 101.250(b) to provide a 1-percent allowance for frozen fruits and vegetables when they are weighed more than 7 days following the end of the day of pack, and for fresh bread, buns, and rolls when they are weighed more than 1 day, but less than 7 days, following the end of the day of pack.

Except for flour, dry animal food, frozen fruit and vegetables, and fresh bread, buns, and rolls, FDA is not aware of data that would permit the agency to estimate specifically what allowances should be provided for each of the other commodities identified as undergoing moisture loss during distribution. Some data were submitted in 1980 that showed moisture losses for other products of as high as 20 percent, but the person submitting these data stated that, in the studies in which the data were derived, the packaging of the products had been punctured to permit moisture loss. FDA advises that such deviations from actual marketing conditions make these studies of dubious value.

However, because NIST has thoroughly evaluated the need for allowances in one major food commodity (i.e., flour, Ref. 12) and has concluded that a significant moisture loss allowance must be provided, and because, as explained above, many other food commodities also need some allowance for moisture loss, the agency tentatively finds that it must take some action to establish allowances for those commodities that are subject to moisture loss problems until sufficient data are provided by the affected industries. Accordingly, FDA is proposing in § 101.250(c) that the commodities that it identified above as undergoing moisture loss during distribution be provided with the same 3-percent allowance that it is proposing for flour more than 7 days following day of pack.

The proposed allowance is a crude estimate of reasonable variations for commodities other than flour. FDA's tentative view is that the allowance is not too lenient because packers are subject to inspection at the point of pack. The agency recognizes, however, that point of pack inspection of foreign firms may not be likely. Thus it hopes that, during the comment period, interested parties will develop and submit data on which it can establish reliable moisture loss allowances. The agency suggests that firms interested in developing such data work closely with NCWM, which has expertise in this area.

Nonetheless, some restriction on the proposed allowances for moisture loss seems warranted based on the type of packaging. Certainly, no allowance should be made where the food is packaged in an air tight container (e.g., cans, glass bottles, food enclosed in paraffin). FDA is therefore proposing that foods in such containers will not be permitted any moisture allowance (§ 101.250(a)(4)). Further, the agency is proposing that if the food is not subject to moisture loss, no allowance is permitted (§ 101.250(a)(3)).

C. Oysters

The traditional method of sale for packaged raw oysters out of the shell (''shucked'') is by fluid volume (consumer-sized packages are sold by the pint) rather than by drained weight. Given this traditional trade practice, to facilitate value comparisons, FDA tentatively concludes that it needs to establish a limit on the amount of free liquid in packages of oysters. Without such a limit, poor manufacturing and packaging practices may result in excessive water in shucked oyster packages. NIST explained that shucked oysters sold by fluid volume are often packed by methods that can introduce excessive water into the package (Ref. 3). For example, water may be introduced by:

(1) Storing the shucked oysters in an ice slush before packing;

(2) Cleaning the shucked oysters for a several-hour period with aerated water; and

(3) Not draining the oysters as they are being placed in the package; or

(4) Adding the oysters to containers that already have water in them.

NIST advised that NCWM has found that these practices are widespread and particularly prevalent in the warmer months (Ref. 3). NIST pointed out that without enforceable controls on the amount of free liquid in the containers, only continuous inspection could practicably control these practices.

NIST stated that commercial oyster buyers often specify a minimum net weight for oysters in an attempt to control poor packaging practices (e.g., some buyers specify a ''4-pound gallon''

or a ''6-pound gallon,'' meaning there has to be 4 or 6 lbs of oysters in a gallon). However, the packages are not marked as to the amount of solids.

In addition, packages that have more fluid and less solids cannot be visually identified, even when sitting side-by-side with packages containing significantly lesser amounts of free liquid. Studies conducted by the Virginia Department of Agriculture have shown that observers could not identify packages that contained only 15-percent free liquid from those that contained 60 percent (Ref. 3). (NIST stated that although NCWM recognizes that other similar shellfish products (e.g., scallops) may have similar problems as oysters, it was not aware that adequate studies have been performed to justify establishing a limit on the amount of free liquid in packages of those products.)

Although FDA limits the amount of free liquid in packaged raw oysters to 5 percent § 161.130(c)(2)(ii) (21 CFR 161.130(c)(2)(ii)), this limit can only be enforced at the packing plant. As a result, for many years there has been a significant void in surveillance activities concerning the free liquid requirement. Seafood trade associations have advised FDA that, although western U.S. oysters have low amounts of free liquid, southeastern U.S. oysters typically have between 5- and 15-percent moisture (Ref. 3). Retail market studies conducted by State weights and measures agencies over a 2-year period in 1989 and 1990 at the request of NCWM found that packagers could meet a 15-percent limit in free liquid (Ref. 3).

NIST has advised that, in 1991, NCWM adopted a standard of fill for fresh oysters that are removed from the shell that limits the free liquid to 15-percent by weight (Ref. 3).

For this reason, NCWM adopted the 15-percent criterion [9] to limit the free liquid to a reasonable and specific level. NIST recommends (Ref. 3) that, for national uniformity, FDA revise its regulations to permit no more than 15-percent free liquid in shucked oysters.

FDA tentatively agrees with the recommendation of NIST that a 15-percent criterion should be established. Accordingly, the agency is proposing to add this limit to the standard of identity for oysters in § 161.130(d).

In addition, FDA is aware that the names for the species of oysters currently identified in § 161.130 are outdated (i.e., *Ostrea gigas, O. virginica,* and *O. lurida*). These names need to be revised to maintain consistency with accepted scientific nomenclature set forth in American Fisheries Society Special Publication 16, ''Common and Scientific Names of Aquatic Invertebrates From the United States and Canada: Mollusks'' (Ref. No. 13). In that publication, the respective scientific names of these species names appear as ''*Crassostrea gigas*, *C. virginica*, and *Ostreola conchaphila*.'' FDA is therefore proposing to revise § 161.130 to reflect the updated nomenclature. FDA emphasizes that this proposed change will not have any substantive impact on the food standard for oysters. The proposed change does not change the oyster species covered by § 161.130.

[9] Section 1.5.2.3. of the Uniform Method of Sale of Commodities Regulation.

VII. The Impact on Other Rulemaking Proceedings

FDA points out that, in the Federal Register of May 21, 1993 (58 FR 29716), and December 21, 1993 (58 FR 67444), it proposed revisions to § 101.105 to accommodate new statutory requirements for declaration of net contents in metric units and to reorganize existing provisions of contents labeling provisions for clarity. Except for redesignating § 101.105 as § 101.200 and the specific changes proposed in this document, FDA does not intend that the earlier proposals be affected by this rulemaking. Because the earlier proposals initiated a reorganization of § 101.105, the actual location in new § 101.200 of the proposed provisions may differ from that identified in this proposal. Although FDA is not addressing the changes initiated in the May 21, 1993, and December 21, 1993, proposals in this preamble, the agency points out that it proposed to change the headings of all quantity of contents regulations from ''Declaration of net quantity of contents when exempt'' to ''Declaration of net quantity of contents.'' Thus, any confusion about ''when exempt'' in the heading of proposed §§ 101.200 and 501.105 will be addressed in rulemaking based on the May 21, 1993, and December 21, 1993, proposals.

VIII. Animal Products

As mentioned in section VI.A. of this document above, FDA considers it logical to continue to have the same requirements for human and animal food with respect to declarations of net quantity of contents. The agency sees no reason to reiterate all of the same provisions in both parts 101 and 501 when it can cross-reference those provisions in part 101 that pertain to net contents in part 501. To that end, the agency is proposing to revise § 501.105 in the same manner as it is proposing to revise § 101.200 (current § 101.105) and to cross-reference all remaining changes. In addition, as stated in section VI.A. of this document, FDA is proposing to define ''dry animal food'' in proposed § 501.105(u).

However, FDA is proposing one difference in how quantity of contents is declared on human and animal food. The difference pertains to whether, for an animal food packed in liquid with a net contents declaration in terms of weight, the liquid should be included in the net weight declared. For human food, FDA is proposing in § 101.220(c) procedures for measuring drained weight. The focus on drained weight derives from the provisions of the act on nutrition labeling and, specifically, on serving size, which focuses on the amount of food customarily consumed. There are no equivalent provisions in the animal food labeling regulations. Section 403(q) of the act, on nutrition labeling, only applies to food intended for human consumption. In view of the lack of such a reference regulation, and the fact that FDA knows of no need to address requirements concerning liquid packing media in animal food, FDA is not proposing a parallel provision on drained weight in § 501.105.

The accuracy provisions for animal food regulations are slightly different from the provisions in proposed § 101.200 for human food because of the previously discussed differences in the proposed animal and human food provisions. Instead, proposed § 501.105 excepts provisions of § 101.200 from incorporation with the rest of subpart H of part 101. Because proposed § 501.105 contains all the provisions of proposed § 101.201, FDA is also not incorporating the latter provision in § 501.105.

IX. Analysis of Impacts

FDA has examined the economic implications of the proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant impact on a

substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of the rule on small entities. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866. The agency acknowledges that some provisions of this rule may have significant impact on a substantial number of small entities. Finally, the agency, in conjunction with the administrator of the Office of Management and Budget (OMB), finds that this is not a major rule for the purpose of congressional review (Pub. L. 104–121).

A. The Compelling Public Need for a Regulation

FDA is proposing this rule in order to establish specific procedures for checking conformance to net contents labeling requirements. As discussed previously in this preamble, the preemptive nature of regulations pertaining to net contents results in these procedures being the only ones that State and local jurisdictions can adopt if they decide to ensure the accuracy of net contents declarations. State and local jurisdictions are likely to bring a degree of rigor to enforcement of these standards that reflects the preferences of the populations that they represent. However, there is no reason to believe that consumers in different jurisdictions have different preferences about the specific statistical methods for determining conformance to net contents labeling requirements. Further, to the extent that FDA defines ''reasonable variations'' in its regulations, the affected industry will know at what point contents deviations would be considered violative. Such knowledge should help firms to reduce overfilling of packages and facilitate interstate commerce by making the establishment of more uniform target fill levels practicable for all package sizes. Currently food packagers selling food in interstate commerce must meet different standards for determining quantity of fill in different jurisdictions, depending on the analytical method of determining compliance used in each jurisdiction. FDA is proposing to establish provisions to remedy this situation.

B. Costs

Because the requirements in this proposed rule would allow industry to reduce overfilling of package contents, the agency believes that, except possibly for the amendment to the oyster standard discussed in section VIII.B. of this document, this proposal will cause no compliance costs to be incurred by industry. To the extent that this proposal will preempt the current activities of State and local agencies, these entities may incur some costs of switching to the new method of determining compliance with these fill rules. For example, some State and local agencies may need to retrain some inspectors.

FDA has no information on the potential need for retraining or the costs of retraining. However, the agency believes these costs will be small because the measures that FDA is proposing are generally consistent with those of NCWM, which are used by most of the States.

The agency is proposing to amend the standard of identity for oysters to limit the amount of free liquid to 15 percent. The agency has no data on the extent to which shellfish shippers pack oysters with more than 15-percent free liquid. However, the agency believes that this does not occur frequently, and that the cost of complying with the proposed standard will be small. This conclusion is based on information from NIST stating that, because NCWM adopted a 15-percent free liquid standard, there have been no reports of widespread complaints about the moisture content of shucked oysters. The agency requests comment on the cost complying with this proposed standard.

C. Benefits

An important benefit of this proposed rule is in establishing a uniform standard for determining compliance with accuracy requirements for net contents declarations across the national food market. A food packager considering entering a market in a State different from those to which it currently ships will not need to be concerned with determining whether it will need to adjust the degree to which it fills its packages. The same standard will apply in all States. Another benefit may be to consumers of food in single serving packages. In using the nutrition information on the nutrition labels, consumers will have information that more accurately reflects the actual contents of the package if the degree of package overfill is reduced.

D. The Initial Regulatory Flexibility Analysis

If finalized, this rule will establish a national standard for enforcing net contents declarations. Given that the standard for net contents declarations that FDA is proposing, except possibly for the amendment to the oyster standard discussed in section VIII.D. of this document, will impose no compliance costs on industry, the agency believes that there will be no significant impact from these provisions on a substantial number of small businesses. However, because there is some uncertainty related to the costs of compliance, FDA is voluntarily doing this Initial Regulatory Flexibility Analysis. The agency requests comments on its judgment.

The only provision of this proposed rule that may have a significant impact on a substantial number of small businesses is the proposed amendment of the standard of identity for shucked oysters, which, if adopted, will establish a ceiling on the amount of free liquid at 15 percent by mass or weight. There are approximately 400 shellfish shucking-packing or repacking plants in the United States on the Interstate Certified Shellfish Shippers List (ICSSL) for November 1995. There are approximately 100 foreign shellfish shucking-packing or repacking plants that ship to the United States on the ICSSL for the same period. With few exceptions, these are single plant businesses, and all of the businesses have fewer than 500 employees. The agency has no data on the extent to which shellfish shippers pack oysters with more than 15-percent free liquid. However, it seems likely that excessive filling with free liquid does not occur frequently based on information from NIST stating that since NCWM adopted a 15-percent free liquid standard, there have been no reports of widespread complaints about the moisture content of shucked oysters. The agency requests comment on the impact of this provision on small shellfish shippers.

FDA has several alternatives to the proposed limit of 15-percent free liquid by mass or weight for shucked oysters. The agency could establish a lower limit or a higher limit. Shellfish shippers have a cost incentive to ship the maximum allowable amount of free liquid in shucked oysters. Therefore, the higher the limit set by regulation, the more free liquid packages will contain. For this reason, the agency wants to avoid setting an unnecessarily high limit on free liquid. The agency requests comment on the impact of various limits on free liquid on small shellfish shippers.

Another approach could be to require label declaration of the percent free liquid, by mass or weight, in the package. The advantages of such a policy are: (1) That the standard is less prescriptive, (2) that consumers are informed by the label as to the amount of free liquid in the package, and (3) that processors are not penalized for shipping packages with less free liquid than their competitors, but instead they

are given an incentive to reduce the amount of moisture in the package. The disadvantages of such a policy are: (1) That frequent label changes may be necessary to accurately label packages where the amount of free liquid varies, (2) that the process of measuring the amount of free liquid with enough frequency to ensure that the packages are labeled accurately may be costly, and (3) that it permits what many consider to be a deceptive practice to continue. The agency requests comments and suggestions on alternatives to the proposed limit of 15-percent free liquid by mass or weight.

X. The Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, or other third party disclosure requirements. Thus, there is no ''information collection'' necessitating clearance by the Office of Management and Budget. FDA tentatively concludes that the moisture loss study described in section 101.250 would generally not be presented to the agency unless, during the course of an investigation, questions have been raised about underfill. Thus the moisture loss study would be exempt from Paperwork Reduction Act (PRA) requirements under 5 CFR 1320.4. To ensure the accuracy of this tentative conclusion, FDA is asking for comment on whether this proposed rule to establish procedures for determining whether label net quantity of content statements are accurate imposes any paperwork burden.

XI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Commerce, National Bureau of Standards, ''NBS Handbook 133-Third Edition,'' ''Checking the Net Contents of Packaged Goods;'' Supplement, September 1990; Suppl. 2, October 1991; and Suppl. 3 October 1992; U.S. Government Printing Office, Washington, DC, 20402–9325.
2. NIST Handbook 133, 3d ed., Supplement 4, U.S. Government Printing Office, Washington, DC, 20402–9325, October 1994.
3. NIST letter to FDA, December 12, 1996.
4. NIST Handbook 44, ''Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices'', October, 1994.
5. NBS Handbook 145, Handbook for the Quality Assurance of Metrological Measurements, Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402, November 1986.
6. Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Stopwatches (undated).
7. American Society of Mechanical Engineers Voluntary Standard Designated as ASME B89 1.14.
8. American Society of Testing and Materials Standard specification E 617–91, Standard Specification for Laboratory Weights and Precision Mass Standards.
9. Fuller, Wayne A., Sample and Surveys, American Mathematical Society Short Course on Modern Statistics: Methods and Application, San Antonio, TX, pp. 1 to 18, 1980.
10. United Kingdom, Department of Trade, ''Code of Practical Guidance for Packers and Importers, Weights and Measures Act,'' Issue No. 1, pp. 10 to 12, 1979.
11. ''Quantity of Contents Compendium,'' June 1966.
12. NBS Special Publication 734, ''Report of the 72d National Conference on Weights and Measures,'' pp. 63 and 64, 83 and 84, 141, and 148 to 157, 1987.
13. American Fisheries Society Special Publication 16, ''Common and Scientific Names of Aquatic Invertebrates From the United States and Canada: Mollusks.''

List of Subjects

21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 161

Food grades and standards, Frozen foods, Seafood.

21 CFR Part 501

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 101, 161, and 501 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. New Subpart H (consisting of §§ 101.200 through 101.250) is added, § 101.105 of subpart G is redesignated as § 101.200 of new subpart H, and newly redesignated 101.200 is amended by revising the section heading, paragraphs (a) and (b), and by removing and reserving paragraph (q), to read as follows:

Subpart H—Net Quantity of Contents

Sec.

Subpart H—Net Quantity of Contents

§ 101.200 Declaration of net quantity of contents.

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents. This declaration shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure. If the food is liquid the declaration must be expressed in terms of fluid measure. If the food is solid, semisolid, or viscous, or a mixture of solid and liquid the declaration shall be expressed in terms of weight. If the food is a fresh fruit, fresh vegetable, or other dry commodity that is customarily sold by dry measure the declaration statement may be expressed in terms of dry measure. Except as provided for in § 101.12, a food that is packed or canned in liquid, and is required to bear a contents declaration in terms of weight, shall bear a declaration expressed in terms of the total net contents including

the liquids. Where the reference amount in § 101.12 is declared in terms of drained solids, the contents declaration shall be in terms of drained weight. If the food is packaged in a self-pressurized container, the statement shall be in terms of the mass or weight of the food and the propellant that will be expelled when the instructions for use as shown on the container are followed. If there is a firmly established general consumer usage or trade custom of declaring the contents of a liquid by weight, or a solid, semisolid, or viscous product by fluid measure, it may be used. Whenever the Food and Drug Administration determines that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or a combination in the case of a specific packaged food does not facilitate value comparisons by consumers and offers an opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such commodity.

(b)(1) Statements of weight shall be in terms of avoirdupois pound and ounce.

(2) Statements of fluid measure shall be in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof.

(3) Statements of dry measure shall be in terms of the U.S. bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof.

* * * * *

§ 101.201 Accuracy of net quantity declaration.

(a) In making volume measurements, the measurement shall be made:

(1) In the case of frozen food that is sold and consumed in a frozen state, at − 18 °C (0 °F);

(2) In the case of refrigerated food that is sold in the refrigerated state, at 4 °C (40 °F); and

(3) In the case of other foods, at 20 °C (68 °F).

(b) The declaration of net quantity of contents shall provide an accurate statement of the quantity of contents of the package. For purposes of this section, an accurate statement is one that conforms to all requirements for the declaration set forth in this subpart. Sections 101.240, 101.245, and 101.250 of this subpart describe what constitutes a reasonable variation in net content declarations that is the result of loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice. All net contents measurements shall be made in accordance with the procedures and methodology set forth in this subpart. Any net quantity of contents declarations that overstate the amount of product in the container by an amount that is more than that can be attributed to a reasonable variation under these regulations will misbrand the product under section 403(e) of the Federal Food, Drug, and Cosmetic Act.

§ 101.205 Definitions.

For the purposes of this subpart the following definitions apply:

(a) *Drained mass or weight* means the mass or weight of solid or semisolid food representing the contents of a package obtained after a prescribed method for removal of the liquid has been employed.

(b) *Dried used tare* means the mass or weight of a container, wrapper, or other material (e.g., glazing on frozen seafood) that is deducted from the gross mass or weight of a package to obtain the net mass or weight. The tare mass or weight comprises all packaging materials (including glue, labels, ties, etc.) that contain or enclose a food, as well as all packaging materials (including prizes, gifts, coupons, decorations, etc.) that are not part of the food. The food is removed from the tare by washing, scraping, wiping, ambient air drying, and other techniques involving more than ''normal'' household recovery procedures, but not including such laboratory procedures as oven drying.

(c) *Gravimetric test procedure* means an analytical procedure that involves measurement by mass or weight.

(d) *Gross mass or weight* means the combined mass or weight of the package including its contents, packing materials, labels, etc.

(e) *Inspection lot* means the collection of packages from which the sample is collected that consists of the same food, with the same label (but not necessarily the same lot code, or in the case of random content packages the same actual quantity), from the same packer.

(f) *Maximum allowable variation* (MAV) means the value of the largest deviation of net quantity of contents below the labeled declaration of net quantity of contents that, where the sample consists of less than 48 individual units, is reasonable for any individual unit, or, where the sample consists of 48 units, is reasonable for any more than one individual unit.1

(g) *Net quantity of contents* means that quantity of packaged food (e.g., in terms of mass or weight, volume, or numerical count) remaining after all necessary deductions of the tare mass or weight from the gross mass or weight.

(h) *Net mass or weight* means the mass or weight of solid or semisolid food plus any liquid that accompanies the food.

(i) *Package error* means the difference between the measured net quantity of contents of an individual package and the declared net quantity of contents on the package label. When the individual package contains less net contents than the declared net contents, the difference is referred to as the ''negative package error.''

(j) *Random sample* means that every package in the lot has an equal chance of being selected as part of the sample.

(k) *Range* means the difference between the largest value and the smallest value in any set of numbers.

(l) *Reference temperature* means the temperature at which the fill of a food sold by volume must meet the declared net quantity of contents.

(m) *Sample* means a random sample of a group of packages taken from a larger collection of packages and providing information that can be used as a basis for making a decision concerning the larger collection of packages or of the package production process.

(n) *Sample size* means the number of packages in a sample.

(o) Sample standard deviation (s) means a statistic used as a measure of dispersion (i.e., differences of individual values from the mean) in a sample. It is calculated as follows:

$s=(\Sigma(x_i-x)^2/(n-1))^{1/2}$ or equivalently (and primarily for calculations without a computer),

$s=((\Sigma x_i^2-(\Sigma x_i)^2/n)/(n-1))^{1/2}$.

Where:

Σ means ''the sum of,''

x_i means the ith individual package error,

n means the sample size, and

x means the average of the package errors, that is, the sum of the package errors divided by the number of packages in the sample.

(p) *Sample error limit (SEL)* means a statistical value that allows for the uncertainty between the average error for the sample and the average error for the inspection lot with a 97-percent level of confidence. It is computed by multiplying a factor appropriate for the sample size (found in column 2 of Table 1, of § 101.240) times the sample standard deviation.

(q) *Tare sample* means the packages selected for use in determining the average used tare mass or weight.

(r) *Total tare sample size* (n_t), means the number of packages used to determine the average used tare mass or weight.

(s) *Volumetric measure* means a measuring device for use in the

measurement of volumes of liquids (e.g., standard measuring flasks, graduates, cylinders, etc.).

§ 101.210 Sample collection.

The following procedures shall be used to collect samples for determining the net quantity of contents of packaged food:

(a) Determine the number of packages in the inspection lot;

(b) Find the inspection lot size in column 1 of Table 1 of this section, and determine the appropriate sample size from column 2 of Table 1; and

TABLE 1.—SAMPLING PLANS

Column 1 inspection lot size	Column 2 sample size
11 packages or less	All packages.
12 to 250 packages	12 packages.
251 to 3,200 packages	24 packages.
More than 3,200 packages ...	48 packages.

(c) Select a random sample of the packages from the inspection lot.

§ 101.215 Measuring equipment.

(a) *Thermometer selection.* Graduations on a thermometer shall be no larger than 1 °C (2 °F).

(b) *Linear equipment selection.* (1) A tape or ruler used to measure dimensions of 63.5 centimeter (25 inches) or less shall be at least as long as the distance to be measured and flexible enough for the measurement and shall have a minimum graduation of 0.5 millimeter (or 1/64 inch) or less.

(2) A tape or ruler used to measure dimensions of more than 63.5 centimeters (25 inches) shall be at least as long as the distance to be measured and flexible enough for the measurement and shall have a minimum graduation of 2 millimeters (1/16 inch).

(c) *Volumetric equipment selection.* Volumetric equipment shall meet the following requirements:

(1) A volumetric measure used in fluid volumetric determinations shall be of such size with respect to the labeled net quantity of contents of the package that no volume less than 25 percent of the maximum capacity of the volumetric measure is measured; and

(2) Have graduations that are not greater than 1/6 of the maximum allowable variation (MAV) for the labeled net quantity of contents of the package being measured.

(d) *Gravimetric equipment selection.* Gravimetric equipment shall meet the following requirements:

(1) A balance may only be used if it has the following features:

(i) It has a load receiving element of sufficient dimensions to hold the packages during weighing;

(ii) It has a load receiving element of sufficient weighing capacity for the package size being tested;

(iii) It has at least 100 scale divisions, and each division is no larger than 1/6 of the MAV for the package size being weighed. The total number of scale divisions on the balance is calculated by dividing the scale or balance capacity by the minimum scale division (e.g., a scale or balance with a capacity of 5,000 grams and a minimum scale division of 0.1 gram has 50,000 scale divisions);

(2) Before each initial daily use, use at a new location, or use in the presence of any indication of abnormal equipment performance, the balance shall be found not to exceed the rejection criteria of paragraph (d)(3)(ii) of this section in all measurements made as part of the following performance tests, which use mass standards that have been calibrated in accordance with paragraph (e) of this section:

(i) For all types of balances, conduct an ''increasing load performance test'' with all test loads centered on the load receiving element. The test shall start with the scale on zero and progress with increasing test loads to an upper ''maximum test load'' of approximately 10 percent more than the gross mass or weight of the package to be weighed. At least four test loads of approximately equal value shall be used to test the device up to the ''maximum test load,'' and the accuracy of the balance shall be determined at each test load;

(ii) For all types of balances, other than one with a beam indicator or equal-arm balance, conduct a ''decreasing load performance test'' with all test loads centered on the load receiving element. The test shall use the same test loads used in the ''increasing load performance test'' of paragraph (d)(3)(i) of this section and shall start at the ''maximum test load.'' The test loads shall be removed from the load receiving element in the reverse order of the increasing load test until all test loads are removed and the accuracy of the balance determined at each test load; and

(iii) For all types of balances, conduct an ''off-center load performance test'' with the test loads located as follows:

(A) Except for an equal arm balance, no test loads are centered on a load receiving element. The test shall use a test load equal to one-half of the ''maximum test load'' used for the ''increasing load performance test'' of paragraph (d)(3)(i) of this section. The test load shall be placed in the center of four separate quadrants, equidistant between the center and edge of the load receiving element and the accuracy of the balance determined in each quadrant. For example, where the load receiving element constitutes a rectangle or circle, the test load would be placed in the center of the circles in the following diagrams:

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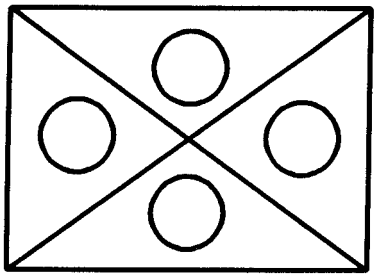

Diagram 1. Off-Center Loading Pattern for Regular or Square Balance Pans

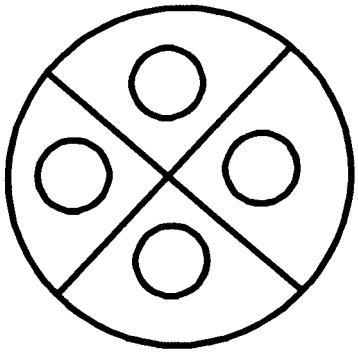

Diagram 2. Off-Center Loading Positions for a single pan balance

(B) For an equal arm balance, both load receiving elements are tested with the same test loads on both elements at the same time. The test shall use test loads equal to one-half of the ''maximum test load'' used for the ''increasing load performance test'' of paragraph (d)(3)(i) of this section. On one receiving element, the test load is centered on the load receiving element. On the other load receiving element, the test load is instead placed in the center of four separate quadrants, equidistant between the center and edge of the load receiving element and the accuracy of the balance determined in each quadrant. This test is repeated with the positions of the test loads switched between load receiving elements. For example, in the first half of the test, the test load would be placed in the center of the circles in the following diagram:

BILLING CODE 4160–01–P

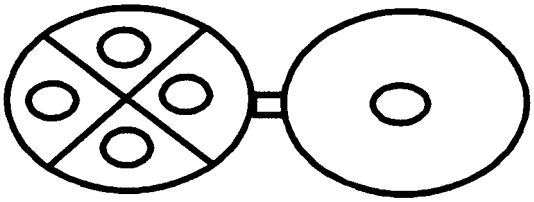

Diagram 3. Off-Center Loading Positions for an Equal Arm Balance. Each side is tested using the same pattern.

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(iv) For all types of balances, conduct a ''repeatability performance test'' with the ''maximum test load'' centered on the load receiving element. The ''maximum test load'' shall be weighed at least twice, and the accuracy of the balance determined with each measurement;

(3) A balance may only be used if it does not have an error that exceeds the number of smallest units of measure (i.e., balance divisions) for rejection established by the procedures set forth below:

(i) Determine in Table 1 of this section the Class of the balance that is appropriate in light of the minimum balance division and the total number of balance divisions to be used for the net contents measurement. For example, with a balance with a minimum balance division of 1 gram and 50,000 total balance divisions the appropriate tolerance class is ''Class II'';

TABLE 1.—BALANCE CLASSES

Value of smallest balance division [1]	Minimum and total number of balance divisions	Balance class
1 milligram to 0.5 gram (g)	Device has more than 100, but not more than 100,000 balance divisions.	II
0.1 g or more	Device has more than 5,000, but not more than 100,000 balance divisions.	II
0.1 g to 2 g 0.0002 pound (lb) to 0.005 lb 0.005 ounce (oz) to 0.125 oz	Device has more than 100, but not more than 10,000 balance divisions.	III
5 g or more 0.01 lb or more 0.25 oz or more	Device has more than 500, but not more than 10,000 balance divisions.	III

[1] On some balances, manufacturers have designated a verification balance division for testing purposes. Where the verification balance division is less than or equal to the minimum balance division, the verification division shall be used instead of the minimum balance division. Where balances are made for use with standard test weights (e.g., an equal arm balance), the smallest test weight used for the measurement is the minimum balance division.

(ii) Determine in Table 2 of this section the number of balance divisions for rejection that is appropriate for the test load and the balance class to be used for the net contents measurement. For example, with a test load of up to 20,000 balance divisions and a Class II balance, ± 2 is the appropriate number of balance divisions for rejection. In this situation, the balance may not be used if it has an error of two balance divisions in any of the performance tests set forth in paragraph (d)(3) of this section;

TABLE 2.—BALANCE DIVISIONS FOR REJECTION

Balance class II test load in balance divisions	Balance class III test load in balance divisions	Number of balance divisions for rejection
0 to 5,000	0 to 500	1
5,001 to 100,000	501 to 4,000	2
Not Applicable	4,001 or more	3

(e) *Accuracy standardization.* When compared directly or indirectly to standards provided by the National Institute of Standards and Technology (NIST), all equipment identified in this paragraph shall be standardized before initial use in accordance with the calibration instructions set forth in NBS Handbook 145, Handbook for the Quality Assurance of Metrological Measurements, which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51. Copies of this publication may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Except for volumetric glassware, the comparison to NIST standards shall be done on a routine basis (e.g., annually for equipment used on a weekly basis). The standardization shall ensure that the equipment does not have an error that exceeds the following rejection criteria:

(1) *Stop-watch standardization.* A stop-watch shall not have an error exceeding ±2 seconds in a 3-hour time period;

(2) *Thermometer standardization.* A thermometer shall not have an error exceeding ±1 °C (2 °F);

(3) *Linear measure standardization.* (i) A tape or ruler used to measure dimensions of 63.5 centimeters (25 inches) or less shall not have a measurement error greater than ±0.39 millimeter (±1⁄64 inch);

(ii) A tape or ruler used to measure dimensions of more than 63.5 centimeters (25 inches) shall not have a measurement error greater than ±2 millimeter (±0.1 inch); and

(iii) A caliper or depth gauge shall not exceed the error limits in Table 3 of this section.

TABLE 3.—ERROR LIMITS FOR CALIPERS AND DEPTH GAUGES

Measured length in millimeters	Error limit in micrometers
0 to 400	±50
400 to 800	±100
800 to 1000	±150

(4) *Volumetric standardization.* An error in volumetric measuring equipment shall not exceed the error limits in Table 4 of this section; and

TABLE 4.—Error Limits for Flasks and Cylinders [1]

Capacity at 20 °C (68 °F)	Error limits for the full capacity	Error limits for individual graduations
50 milliliter (mL) cylinder.	±0.3 mL±	±0.3 mL
2 fluid ounces (59 mL) cylinder.	±0.3 mL	±0.30 mL
100 mL flask	±0.2 mL	±0.06 mL
1 gill (118 mL) flask.	±0.2 mL	±0.10 mL
200 mL flask	±0.3 mL	±0.10 mL
½ pint (236 mL) flask.	±0.3 mL	±0.10 mL
250 mL flask	±0.3 mL	±0.10 ml
1 pint (473 mL) flask.	±0.4 mL	±0.15 mL
500 mL flask	±0.5 mL	±0.15 mL
1 quart (946 mL) flask.	±0.7 mL	±0.30 mL
1,000 mL flask	±0.8 mL	±0.22 mL
½ gallon (1,892 mL) flask.	±1.0 mL	±0.30 mL
2,000 mL flask	±1.2 mL	±0.33 mL
1 gallon (3,785 mL) flask.	±1.2 mL	±0.30 mL

[1] For volumetric measures less than 50 mL, full capacity error limits do not apply. For these volumetric measures apply ±0.10 mL to individual graduations. For a capacity intermediate between two capacities listed below the tolerances prescribed for the lower capacity shall be applied. For volumes greater than 3,785 mL (1 gallon) apply ±0.02 percent of nominal capacity for error limits at full capacity and ±0.3 percent of the minimum graduation for error limits for individual graduations.

(5) *Gravimetric standardization.* (i) Errors in mass standards used to test Class II balances, as described in paragraph (d) of this section, shall not exceed the error limits in Tables 5 and 6 of this section.

TABLE 5.—ERROR LIMITS FOR INCH-POUND MASS STANDARDS USED TO TEST TOLERANCE CLASS II BALANCES

Mass standard in pounds	Error limits in milligrams
100	±910
50	±450
25	±23
10	±91
5	±45
2	±18
1	±9
0.5	±K4.5
0.2	±1.8
0.1	±1.1
0.05	±0.77
0.02	±0.45
0.01	±0.34
0.005	±0.27
0.002	±0.19
0.001	±0.15

TABLE 5.—ERROR LIMITS FOR INCH-POUND MASS STANDARDS USED TO TEST TOLERANCE CLASS II BALANCES—CONTINUED

Mass standard in ounces	Error limits in milligrams
8	±4.5
4	±2.3
2	±1.3
1	±0.86
0.5 (½)	±0.59
0.25 (¼)	±0.43
0.2	±0.38
0.125 (⅛)	±0.31
0.1	±0.29
0.0625 (1⁄16)	±0.24
0.05	±0.23
0.03125 (1⁄32)	±0.19
0.02	±0.17
0.015625 (1⁄64)	±0.15
0.01	±0.14

TABLE 6.—ERROR LIMITS FOR SI MASS STANDARDS USED TO TEST TOLERANCE CLASS II BALANCES

Mass standard in kilograms	Error limits in milligrams
50	±1000
25	±500
20	±400
10	±200
5	±100
2	±40
1	±20
Mass standard in grams	**Error Limits in milligrams**
500	±10
300	±6
200	±4
100	±2
50	±1.2
30	±0.90
20	±0.70
10	±0.50
5	±0.36
2	±0.26
1	±0.20
Mass standard in milligrams	**Error Limits in milligrams**
500	±0.16
300	±0.14
200	±0.12
100	±0.10
50	±0.085
30	±0.075
20	±0.070
10	±0.060
5	±0.055
2	±0.05
1	±0.05

(ii) Errors in mass standards used to test tolerance Class III balances, as described in paragraph (d) of this section, shall not exceed the error limits in Tables 7 and 8 of this section.

TABLE 7.—ERROR LIMITS FOR INCH-POUND MASS STANDARDS USED TO TEST TOLERANCE CLASS III BALANCES

Mass standard in pounds	Error limits in grams
100	±4.5
50	±2.3
25	±1.1
20	±0.91
10	±0.45
	Error limits in milligrams
5	±230
2	±91
1	±70
0.5	±45
0.2	±18
0.1	±9.1
0.05	±4.5
0.02	±1.8
0.01	±1.5
0.005	±1.2
0.002	±0.87
0.001	±0.7
Mass standard in ounces	Error limits in milligrams
8	±45
4	±23
2	±11
1	±5.4
0.5 (1/2)	±2.8
0.25 (1/4)	±1.7
0.2	±1.6
0.125 (1/8)	±1.3
0.1	±1.3
0.0625 (1/16)	±1.1
0.05	±1.0
0.03125 (1/32)	±0.87
0.02	±0.75
0.015625 (1/64)	±0.69
0.01	±0.60

TABLE 8.—ERROR LIMITS FOR SI MASS STANDARDS USED TO TEST TOLERANCE CLASS III BALANCES

Mass standard in kilograms	Error limits in grams
50	±5
20	±2
10	±1
5	±0.5
2	±0.2
1	±0.1
Mass standard in grams	Error limits in milligrams
500	±70
300	±60
200	±40
100	±20
50	±10
20	±4
10	±2
5	±1.5
2	±1.1
1	±0.9

TABLE 8.—ERROR LIMITS FOR SI MASS STANDARDS USED TO TEST TOLERANCE CLASS III BALANCES—CONTINUED

Mass standard in kilograms	Error limits in milligrams
500	±0.72
300	±0.61
200	±0.54
100	±0.43
50	±0.35
30	±0.30
20	±0.26
10	±0.21
5	±0.17
2	±0.12
1	±0.10

§ 101.220 Analytical procedures, net mass or weight.

The following procedures shall be used to determine the net quantity of contents of packaged foods labeled in terms of mass or weight:

(a) Make all measurements with equipment that conforms to § 101.215. Good weighing procedures shall be used to ensure accurate results (e.g., operate scales or balances in accordance with the manufacturers instructions, and conduct tests in locations where the environment does not adversely affect results);

(b)(1) The following core procedure shall be used to determine net mass or weight, except where a different specific procedure is provided for in paragraph (b)(2) of this section:

(i) Determine the gross mass or weight of the package;

(ii) Determine the average used tare mass or weight in accordance with provisions of § 101.235; and

(iii) Determine net mass or weight by subtracting the average used tare mass or weight determined in (b)(1)(ii) of this section from the gross mass or weight of each package in the sample.

(2) For unglazed frozen seafoods and vegetables, the method prescribed for unglazed frozen foods in the ''Official Methods of Analysis of the Association of Official Analytical Chemists International,'' 16th ed., 1995, section 963.26, under the heading ''Net Contents of Frozen Food Containers Procedure 1963,'' which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51, shall be used to determine net mass or weight. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c)(1) The following core procedure shall be used to determine drained mass or weight except where a different specific procedure is provided for in paragraph (c)(2) of this section:

(i) Determine and record the following:

(A) The tare mass or weight of the receiving pan; and

(B) The gross mass or weight of each individual package of the sample;

(ii) Use a 203 millimeters (8 inch) U.S. No. 8 standard test sieve for packages with net quantity of contents of 1.36 kilograms (3 pounds) or less, or a 305 millimeters (12 inch) U.S. No. 8 standard test sieve for packages with net contents greater than 1.36 kilograms (3 pounds); except that, for canned tomatoes obtain either a 203 millimeters (8 inch) or 305 millimeters (12 inch) (as appropriate) U.S. No., 11.3 millimeters (7/16 inch) standard test sieve;

(iii) Pour the contents of the package into the appropriate dry sieve with the receiving pan beneath it; incline the sieve at an angle of 17° to 20° to facilitate drainage. Do not shake or shift material on the sieve. Drain exactly 2 minutes;

(iv) Immediately weigh the receiving pan, liquid, wet container, and any other tare material (do not include weight of sieve and food). Record this value as the total tare mass or weight for the package and receiving pan;

(v) Subtract the tare mass or weight of the receiving pan determined according to paragraph (c)(1)(i) of this section from the mass or weight obtained in paragraph (c)(1)(iv) of this section to obtain the tare mass or weight (which includes the mass or weight of the liquid packing medium);

(vi) Subtract the tare mass or weight determined according to paragraph (c)(1)(v) of this section from the appropriate package gross mass or weight determined according to paragraph (c)(1)(i) of this section to obtain the net weight of that package. Determine the package error by subtracting the net mass or weight from the labeled mass or weight; and

(vii) Repeat the procedure provided for in paragraphs (c)(1)(ii) through (c)(1)(vi) of this section for the remaining packages in the sample. Clean and dry the sieve and receiving pan between measurements on each package.

(2) The following procedures shall be used to determine drained mass or weight for the foods noted. The procedures in this paragraph shall be conducted in accordance with the specified section ''Official Methods of

Analysis of the Association of Official Analytical Chemists International,'' 16th ed., 1995, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC:

(i) For glazed vegetables and for frozen seafood, except for frozen shrimp and crabmeat, the method prescribed for glazed seafoods in section 963.18, under the heading ''Net Contents of Frozen Seafoods,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) For frozen shrimp and crabmeat, the method prescribed for frozen shrimp and crabmeat in section 967.13, under the heading ''Drained Weight of Frozen Shrimp and Crabmeat,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(iii) For frozen crabmeat, the method prescribed for in paragraph (c)(2)(ii) or the method prescribed for frozen crabmeat in section 970.60, under the heading ''Drained Weight of Frozen Crabmeat,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(d) For shucked oysters, the percent of liquid by weight that is removed by draining shall be determined by using the method prescribed for such foods in section 953.11, under the heading ''Drained Liquid from Shucked Oysters,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (c)(2) of this section.

§ 101.225 Analytical procedures, volume.

The following procedures shall be used to determine the net quantity of contents of packaged foods labeled in terms of volume:

(a) Conduct all measurements on equipment that conforms to § 101.215 Good weighing and measuring procedures shall be used to ensure accurate results (e.g., operating scales or balances in accordance with the manufacturer's instructions, and conducting tests in locations where the environment does not adversely affect results).

(b) The following procedure shall be used to determine net volume, except where a different procedure is provided for in paragraphs (c), (d), (e), and (f) of this section:

(1) Bring the package and its food to the appropriate temperature as set forth in § 101.201(a), within the following temperature ranges:

(i) In the case of frozen food, −18 °C (0 °F) to −15 °C (5 °F);

(ii) In the case of refrigerated food, 1.7 °C (35 °F) to 7.2 °C (45 °F); or

(iii) In the case of other foods, 20 °C (68 °F) to 22.7 °C (73 °F).

(2) Prepare a clean volumetric measure of appropriate capacity for use;

(i) If the volumetric measure is calibrated on a ''to contain'' basis, immediately before each measurement, the volumetric measure shall be dried.

(ii) If the volumetric measure is calibrated on a ''to deliver'' basis, immediately before each use, the volumetric measure shall be filled with water to a point slightly below the top graduation on the neck. Start a stopwatch and invert the volumetric measure gradually, so that the walls are splashed as little as possible, to approximately an 85° angle and completely empty the volumetric measure.

(A) If the volumetric measure is marked with a standardized emptying time, hold the measure in the inverted position until the stopwatch indicates that the entire standardized time has expired, and touch off the drop of water that adheres to the tip.

(B) If no standardized emptying time is provided, pour the food in a steady stream so that virtually all of the product is delivered within 30 seconds (± 5 seconds). If a drainage time is designated by the manufacturer for the volumetric measure, hold the volumetric measure in the inverted position until any time designated on the measure has elapsed, or until the stopwatch indicates that 10 seconds have elapsed beyond the time necessary to completely empty the container. Touch off the drop of water that adheres to the tip.

(iii) If the food effervesces or foams when opened or poured (such as carbonated beverages), add two drops of a defoaming agent to the bottom of the volumetric measure before filling with the food.

(iv) For additional measurements of a food, use water to wash or rinse and prepare the volumetric measure between each measurement of liquid food from the sample packages (dry or drain the volumetric measure as described in paragraph (b)(2)(i) or (b)(2)(ii) of this section, as appropriate);

(3) If the food requires mixing for uniformity, it should be mixed before opening each package (e.g., in accordance with any shaking instructions specified on the package label);

(4) Empty the food into the volumetric measure holding the package in a nearly vertical position, but tipping so that the bottom of the container will drain. Drain the container into the volumetric measure for 1 minute after the stream of liquid breaks into drops; and

(5) Position the volumetric measure vertically with the surface of the liquid at eye level. For foods that are clear liquids, place a shade of some dark material immediately below the meniscus and read volume from the lowest point of the meniscus. For foods that are opaque liquids, read volume from the center of the top rim of the liquid surface.

(c) Except where a different procedure is provided for in paragraphs (d) and (e) of this section, the following gravimetric procedure may be used to determine net volume if the product density requirements of this paragraph are met:

(1) Select a volumetric measure equal to or one size smaller than the labeled volume and determine the tare mass or weight of the measure;

(2) Prepare the package and volumetric measure for measurement by following the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section;

(3) Determine acceptability of the food density variation on two packages selected for tare determination in accordance with provisions of § 101.235 as follows:

(i) Determine the gross mass or weight of the first food package;

(ii) Pour an amount of the food from the first food package into a volumetric measure exactly to a specified mark on the neck of the measure. The amount of the food that is elected to be poured is referred to as the volume standard (vol_{std}) for this procedure;

(iii) Weigh the filled volumetric measure and subtract the tare mass or weight of the measure to obtain the net mass or weight of the food;

(iv) Determine the net mass or weight of the vol_{std} of the food from a second package using the procedure in paragraph (c)(3)(iii) of this section; and

(v) If the difference between net mass or weight of both packages exceeds one division of the scale or balance, the net quantity of contents may not be determined by the gravimetric procedure in this paragraph; instead, use the totally volumetric procedure provided for in paragraph (b) of this section;

(4) Determine the ''nominal gross mass or weight'' as follows:

(i) Determine the average used tare mass or weight of the sample in

accordance with provisions of § 101.235. Include the packages used to determine acceptability of this procedure as part of the tare;

(ii) Use the net mass or weight of the known volume (Vol_{std}) as determined in paragraphs (c)(3)(iii) and (c)(3)(iv) of this section and calculate the average of the two values for the average net mass or weight (net wt_{avg});

(iii) Calculate the average net mass or weight of the labeled volume (avg. wt v_1) of the food using the formula:

Avg. wt v_1=(net wt_{avg}/vol_{std}) × labeled volume of net contents;

(iv) Calculate the ''nominal gross mass or weight'' (nom. gr. wt) using the formula:

Nom. gr. wt = avg wt v_1 + average used tare mass or weight;

(v) Weigh the remaining packages in the sample;

(vi) Subtract the nominal gross mass or weight from the gross mass or weight of each package to obtain package errors in terms of weight;

(vii) Calculate the average error of the sample (i.e., the total error divided by the sample size); and

(viii) If the average error is a negative number, calculate package error for each package in terms of volume using the formula:

Package error (volume) = [package error in weight] divided by [average weight of both standard volumes of paragraph (c)(3) of this section (net wt avg)] multiplied by [volume of standard volume (vol_{std})]

(d) For shucked oysters, clams, or scallops, use the method prescribed for such foods in the ''Official Methods of Analysis of the Association of Official Analytical Chemists International,'' 16th ed., 1995, section 937.08, under the heading ''Volume of Shucked Oysters, Clams or Scallops,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(e) The volume displacement procedure prescribed for ice cream and frozen desserts in the ''Official Methods of Analysis of the Association of Official Analytical Chemists International,'' 16th ed., 1995, section 968.14, under the heading ''Weight per Unit Volume of Packaged Ice Cream'' Method I, which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. This procedure may be used to determine volume where appropriate; except that water of 33 °F (0.56 °C) or below may be used rather than the kerosene displacement liquid in that procedure, provided that the food does not mix with the ice water;

(f) The volumetric depth gauge procedure set forth below may be used to determine volume where the food has a smooth and level headspace (e.g., oils, syrups, and other viscous liquids):

(1) Make all measurements on a surface that appears to be level when tested with a bubble level that is at least 15 centimeters (6 inches) in length;

(2) Bring the temperature of both the food and the water to be used to measure the volume of the food to the appropriate temperature provided for in § 101.201(a), achieving a temperature within the range designated in paragraph (b)(1) of this section;

(3) Determine the headspace of the package at the point of contact with the food using a depth gauge with a fully rounded rather than a pointed rod end. If necessary, the package shall be supported to prevent the bottom of the container from distorting;

(4) Empty, clean, and dry the package;

(5) Refill the container with distilled water measured from a volumetric measure to the original food headspace level found in paragraph (f)(3) of this section until the water touches the depth gauge; and

(6) Determine amount of water used in paragraph (f)(5) of this section to obtain the volume of the food and calculate the ''package error'' for that volume;

(g) The volumetric air space procedure set forth in this paragraph may be used to determine volume where the food does not have a smooth and level headspace (e.g., mayonnaise):

(1) Acquire the following equipment specifically for use in this procedure:

(i) 500-milliliter buret;

(ii) Rubber bulb syringe; and

(iii) Plastic Disks three-millimeter (1/8 inch) thick disks with diameters to correspond to the seat diameter or larger than the brim diameter of each container tested. Diameter tolerance is ±0.05 millimeter (±0.002 inch). The outer edge should be beveled at a 30° angle with the horizontal to 0.8 millimeter (1/32 inch) thick at the edge. There should be a 20-millimeter (3/4 inch) diameter hole through the center of the disk and a series of 1.5-millimeter (1/16 inch) diameter holes 25 millimeters (1 inch) from the outer edge. All edges should be smooth;

(2) Make all measurements on a surface that appears to be level when tested with a bubble level that is at least 15 centimeter (6 inch) in length;

(3) Bring the temperature of both the food and the water used to measure the volume of the food to the appropriate temperature designated in § 101.200(b) within the tolerances provided for in paragraph (b)(1) of this section;

(4) Open the first package and place a disk larger than the package container opening over the opening;

(5)(i) Add water to the container using flask (or flasks), graduate, or buret corresponding to labeled capacity of the container. If it appears that the contents of the flask may overfill the container, do not empty the flask. Add water until all of the air in the container has been displaced and the water begins to rise in the center hole of the disk. Stop the filling procedure when the water fills the center disk hole and domes up slightly due to the surface tension;

(ii) If the water dome breaks on the surface of the disk, the container has been overfilled and the test is void; dry the container and start over; and

(iii) Do not add additional water after the level of the water dome has dropped;

(6) Record the amount of water used to fill the container and subtract 1 milliliter (0.03 fluid ounce) (this is the amount of water in the disk hole) to obtain the air space capacity;

(7) Empty, clean, and dry the package container;

(8) In accordance with procedures set forth in paragraph (5) of this section, refill the package container with water measured from a volumetric measure to the maximum capacity of the package and record the amount of water used as the container volume; and

(9) From the container volume in paragraph (g)(8) of this section, subtract the air space capacity in paragraph (g)(6) of this section to obtain the volume of the food and calculate the ''package error'' for that volume, where ''Package error'' equals labeled volume minus the measured volume of the food.

§ 101.230 Analytical procedures, count.

The following procedures shall be used to determine the net quantity of

contents of packaged foods labeled in terms of count:

(a) Count each unit in each package of the sample to determine the net quantity of contents of packaged foods labeled in terms of count; or

(b) If the product density requirements of paragraph (b)(1) of this paragraph are met, the following gravimetric procedure may be used to determine count:

(1) Determine acceptability of the food density variation on two packages selected for tare determination in accordance with provisions of § 101.235 as follows:

(i) Determine the gross mass or weight of the first food package;

(ii) Open the package and determine the net weight and the exact number of food units in the first food package;

(iii) Calculate the weight of the labeled count of the package using the formula:

Weight of labeled count=[labeled count] divided by [count found] multiplied by [net weight];

(iv) Determine the weight of the labeled count of the food from a second package using the procedure set forth in paragraph (b)(1) (i) to (iii) of this section;

(v) If there is a difference between net mass or weight of the weight of the labeled count calculated from the two packages that exceeds one division of the scale or balance, the net quantity of contents may not be determined by the gravimetric procedure in this paragraph; instead, use the procedure provided for in paragraph (a) of this section;

(2) Determine the ''nominal gross mass or weight'' as follows:

(i) Determine the average used tare mass or weight of the sample in accordance with provisions of § 101.235. Include the packages used to determine acceptability of this procedure as part of the tare;

(ii) With the two determinations of count and net mass or weight of that count as determined in paragraph (b)(1) of this section, calculate the average count ($count_{avg}$) and the average net mass or weight ($net\ wt_{avg}$);

(iii) Calculate the average net mass or weight of the labeled count (ave. wt c_1) of the food using the formula:

Avg. wt c_1 = (net $wt_{avg}/count_{avg}$) × labeled count of net contents;

(iv) Calculate the ''nominal gross mass or weight'' (nom. gr. wt) using the formula:

Nom. gr. wt = avg wt c_1 + average used tare mass or weight;

(3) Weigh the remaining packages in the sample;

(4) Subtract the nominal gross mass or weight from the gross mass or weight of each package to obtain package errors in terms of weight;

(5) Calculate the average error of the sample (i.e., the total error divided by the sample size); and

(6) If the average error is a negative number, calculate package error for each package in terms of count using the formula:

Package error (count) = [package error in weight] divided by [average weight of both known counts of paragraph (b)(2) of this section (net wt_{avg})] multiplied by [average of count of paragraph (b)(2) ($count_{avg}$)]

§ 101.235 Tare determination.

The following procedures shall be used to make tare determinations for the net quantity of contents of packaged foods:

(a) If the net quantity of contents is determined by weighing, an average dried used tare mass or weight shall be used to determine net mass or weight, unless the dried used tare mass or weight of each package in the sample is determined individually. If the inspection lot consists of 11 packages or less, the average dried used tare mass or weight shall be computed with 2 tare samples. If the inspection lot consists of 12 or more packages the average used tare mass or weight shall be computed with 2 tare samples except, if the package is made of glass, or if it is an aerosol container, and the sample size is 24 or 48 packages, 3 tare samples shall be used to compute the average dried used tare mass. Under other situations, the average dried used tare mass or weight shall be computed using the tare sample size (n_t) listed in Table 1 of this section for the different sample sizes (n) as follows:

(b) Select an initial tare sample size (''n_{it}'') as specified in paragraph (a) of this section to determine if additional tare samples are required. Any of the sample packages may be used as tare samples;

(c) Determine the gross mass or weight for each tare sample;

(d) Determine the tare mass or weight of each package in the initial tare sample (n_{it}) and the range of masses or weights of the tare samples (abbreviated as ''R_t''). If the range in the mass or weights of the initial tare sample is zero, no additional tare samples must be taken;

(e) Determine the net mass or weight of each package and, except for random weight packages, the range of net masses or weights in the initial tare sample (abbreviated as ''R_c''). For random weight packages ''R_c'' is determined using the range of the package errors in the initial tare sample, not the range of net masses or weight;

(f) Calculate the ratio of the range of net masses or weights (R_c) to the range of masses or weights in the initial tare sample size (R_t) (i.e., divide R_c by R_t);

(g) From Table 1 of this section, determine the total tare sample size corresponding to the R_c/R_t ratio determined in paragraph (f) (e.g., if the ratio of R_c/R_t is 3.72, the sample size is 48, and the initial tare sample size is 2, the total tare sample size is 10). Where the number of packages listed in the Table 1 of this section for R_c/R_t equals the initial tare sample size, the initial tare sample shall serve as the total tare sample; and

(h) Determine the average dried used tare mass or weight by adding the mass or weight of all of the tare samples required for the total tare sample size and divide that value by the total number of tare samples.

(i) TABLE 1.—TOTAL TARE SAMPLE SIZE (ABBREVIATED AS n_t)

Ratio R_c/R_t	Number of packages in sample [1]				
	n=12	n=24		n=48	
	n_{it}=2	n_{it}=2	n_{it}=3	n_{it}=2	n_{it}=3
0.2 or less	12	24	24	48	48
0.21–0.40	12	23	23	46	46
0.41–0.60	11	22	22	44	44
0.61–0.80	10	21	21	41	41
0.81–1.00	10	19	19	38	38
1.01–1.20	9	18	18	35	35
1.21–1.40	8	16	16	32	32

(i) TABLE 1.—TOTAL TARE SAMPLE SIZE (ABBREVIATED AS n_t)—Continued

Ratio R_c/R_t	Number of packages in sample [1]				
	n=12	n=24		n=48	
	n_{it}=2	n_{it}=2	n_{it}=3	n_{it}=2	n_{it}=3
1.41–1.60	7	15	15	29	29
1.61–1.80	7	13	13	27	27
1.81–2.00	6	12	12	24	24
2.01–2.20	5	11	11	22	22
2.21–2.40	5	10	10	20	20
2.41–2.60	4	9	9	18	18
2.61–2.80	4	8	8	16	16
2.81–3.00	4	7	7	15	15
3.01–3.20	3	7	7	13	13
3.21–3.40	3	6	6	12	12
3.41–3.60	3	6	6	11	11
3.61–3.80	3	5	5	10	10
3.81–4.00	2	5	5	10	10
4.01–4.20	2	4	4	9	9
4.21–4.40	2	4	4	8	8
4.41–4.60	2	4	4	8	8
4.61–4.80	2	4	4	7	7
4.81–5.00	2	3	3	7	7
5.01–5.20	2	3	3	6	6
5.21–5.40	2	3	3	6	6
5.41–5.60	2	3	3	5	5
5.61–5.80	2	3	3	5	5
5.81–6.00	2	2	3	5	5
6.01–6.20	2	2	3	5	5
6.21–6.40	2	2	3	4	4
6.41–6.60	2	2	3	4	4
6.61–6.80	2	2	3	4	4
6.81–7.00	2	2	3	4	4
7.01–7.20	2	2	3	3	3
7.21–7.40	2	2	3	3	3
7.41–7.60	2	2	3	3	3
7.61–7.80	2	2	3	3	3
7.81–8.00	2	2	3	3	3
8.01–8.20	2	2	3	3	3
8.21–8.40	2	2	3	3	3
More than 8.40	2	2	3	2	3

[1] Including those already opened for initial tare determination.

§ 101.240 Compliance procedures; average requirement.

Except where the sample contains packages with a declaration in terms of count that is subject to § 101.245(e), or where the sample consists of only one package, the determination as to whether the declaration of net quantity of contents on the packages in an inspection lot is violative under section 403(e) of the Federal Food, Drug, and Cosmetic Act is to be made using the procedures set forth below:

(a) Calculate the average error of the sample (i.e., the sum of the individual minus and plus package errors divided by the sample size);

(1) If the average error is zero or a positive number, the sample conforms with the average requirement;

(2) If the average error is a negative number, use the following procedure to determine the sample error limit (SEL):

(i) Calculate the sample standard deviation; and

(ii) Obtain the sample correction factor (SCF) from column 2 of Table 1 of this section for the appropriate sample size;

TABLE 1.—SAMPLE CORRECTION FACTORS (SCF)

Column 1 sample size	Column 2 sample correction factor
1 package	Apply Individual package requirement (maximum allowable variation (MAV)
2 packages	1.414
3 packages	1.155
4 packages	1.000
5 packages	0.8944
6 packages	0.8165
7 packages	0.7559
8 packages	0.7071

TABLE 1.—SAMPLE CORRECTION FACTORS (SCF)—Continued

Column 1 sample size	Column 2 sample correction factor
9 packages	0.6667
10 packages	0.6325
11 packages	0.6030
12 packages	0.5774
24 packages	0.4082
48 packages	0.2887

(b) Multiply the sample standard deviation(s) by the SCF to calculate the SEL;

(1) If the average error, disregarding the minus sign, is a smaller number than or equal to the SEL computed in paragraph (b) of this section, the sample complies with this section.

(2) If the average error, disregarding the minus sign, is a larger number than the SEL computed in paragraph (b) of this section, the inspection lot shall be

classified violative; except that, if the sample consists of a product for which a moisture loss allowance has been established in § 101.250, the appropriate allowance percent (A%) provided for in that section shall be used to calculate an adjusted sample error limit (SEL_{adj}) according to the formula:

$$SEL_{adj} = s \times SCF + (A\% \times \text{labeled contents}/100)$$

§ 101.245 Compliance procedures; maximum variations.

An inspection lot shall be classified violative if the net quantity of contents of the sample does not conform to the individual package requirements as determined by the procedures set forth below:

(a) Determine amount of each negative package error in the sample;

(b)(1) In accordance with the appropriate table in paragraph (f) of this section (i.e., Tables 1 and 2 for mass or weight; Tables 3 and 4 for liquid or dry volume; and Table 5 for count except where the count is 50 units or less where MAV's are not applicable), determine the MAV for the labeled net quantity of contents;

(2) Where an allowance for moisture content change is permitted in § 101.250 the MAV shall be adjusted to provide for the change by adding the percent of the labeled mass or weight attributable to the moisture change to the MAV (e.g., if the labeled package size is 2 pounds, and a 1-percent moisture loss could reasonably be expected, the MAV of 0.07 pound from Table 2 of this section is increased by adding 0.02 lb to give an adjusted MAV of 0.09 lb);

(c) Determine the number of negative package errors that exceed the MAV or adjusted MAV, as appropriate, for the labeled net quantity of contents;

(d)(1) Except where the sample contains packages with a declaration in terms of count that is subject to paragraph (e) of this section, any negative package error found in accordance with paragraph (c) of this section results in the inspection lot being classified violative if the sample consists of less than 48 packages;

(2) Except where the sample contains packages with a declaration in terms of count that is subject to paragraph (e) of this section, more than one negative package error found in accordance with paragraph (c) of this section results in the inspection lot being classified violative if the sample consists of 48 packages;

(e) For declarations in terms of count where the declaration is 50 items or less, if more than 1 package from a sample of 12 or less contains less than the labeled count where the inspection lot size is 250 packages or less; or if more than 2 packages from a sample of 24 packages contain less than the labeled count where the inspection lot size is between 251 to 3,200 packages; or if more than 3 packages from a sample of 48 packages contain less than the labeled count where the inspection lot is more than 3,200 packages, the inspection lot shall be classified as violative; and

(f) The Tables of MAV's are as follows:

TABLE 1.—MASS MAV'S FOR INDIVIDUAL PACKAGES LABELED IN METRIC UNITS

Metric units	
Labeled mass or weight in grams (g) or kilograms (kg)	MAV in grams
Less than 36 g	10 percent of labeled quantity.
From 36 to 54 g	4.
More than 54 to 82 g	5.
More than 82 to 118 g	7.
More than 118 to 154 g	9.
More than 154 to 209 g	11.
More than 209 to 263 g	13.
More than 263 to 318 g	15.
More than 318 to 381 g	16.
More than 381 to 426 g	18.
More than 426 to 490 g	20.
More than 490 to 572 g	22.
More than 572 to 635 g	24.
More than 635 to 698 g	25.
More than 698 to 771 g	27.
More than 771 to 852 g	29.
More than 852 to 971 g	32.
More than 971 g to 1.125 kg	35.
More than 1.125 to 1.35 kg	40.
More than 1.35 to 1.60 kg	45.
More than 1.60 to 1.80 kg	50.
More than 1.80 to 2.10 kg	55.
More than 2.10 to 2.64 kg	65.
More than 2.64 to 3.08 kg	70.
More than 3.08 to 3.80 kg	80.
More than 3.80 to 4.40 kg	85.
More than 4.40 to 5.20 kg	100.
More than 5.20 to 6.80 kg	115.
More than 6.80 to 8.20 kg	130.
More than 8.20 to 10.60 kg	145.
More than 10.60 to 14.30 kg	170.
More than 14.30 to 19.25 kg	200.
More than 19.25 to 24.70 kg	230.
More than 24.70 kg	2 percent of labeled quantity.

TABLE 2.—WEIGHT MAV'S FOR INDIVIDUAL PACKAGES LABELED IN INCH-POUND UNITS

Inch-pound units		
Labeled mass or weight in Pounds (lb) or Ounces (oz)	Pounds	MAV ounces
0.08 lb or less, 1.28 oz or less.	10 percent of labeled quantity	
More than 0.08 to 0.12 lb More than 1.28 to 1.92 oz	0.008	1/8
More than 0.12 to 0.18 lb More than 1.92 to 2.88 oz	.012	3/16
More than 0.18 to 0.26 lb More than 2.88 to 4.16 oz	.016	1/4
More than 0.26 to 0.34 lb More than 4.16 to 5.44 oz	.020	5/16
More than 0.34 to 0.46 lb More than 5.44 to 7.36 oz	.024	3/8
More than 0.46 to 0.58 lb More than 7.36 to 9.28 oz	.028	7/16
More than 0.58 to 0.70 lb More than 9.28 to 11.20 oz	.032	1/2
More than 0.70 to 0.84 lb More than 11.20 to 13.44 oz	.036	9/16
More than 0.84 to 0.94 lb More than 13.44 to 15.04 oz	.040	5/8
More than 0.94 to 1.08 lb More than 15.04 to 17.28 oz	.044	11/16
More than 1.08 to 1.26 lb	.048	3/4
More than 1.26 to 1.40	.052	13/16
More than 1.40 to 1.54 lb	.056	7/8
More than 1.54 to 1.70 lb	.060	15/16
More than 1.70 to 1.88 lb	0.064	1
More than 1.88 to 2.14 lb	.070	1 1/8
More than 2.14 to 2.48 lb	.078	1 1/4
More than 2.48 to 2.76 lb	.086	1 3/8
More than 2.76 to 3.20 lb	.094	1 1/2
More than 3.20 to 3.90 lb	.11	1 3/4
More than 3.90 to 4.70 lb	.12	2
More than 4.70 to 5.80 lb	.14	2 1/4
More than 5.80 to 6.80 lb	.15	2 1/2
More than 6.80 to 7.90 lb	.17	2 3/4
More than 7.90 to 9.40 lb	.19	3
More than 9.40 to 11.70 lb	.22	3 1/2
More than 11.70 to 14.30 lb	.25	4
More than 14.30 to 17.70 lb	.28	4 1/2
More than 17.70 to 23.20 lb	.31	5
More than 23.20 to 31.60 lb	.37	6
More than 31.60 to 42.40 lb	.44	7
More than 42.40 to 54.40 lb	.50	8
More than 54.40 lb	4.2 percent of labeled quantity	

TABLE 3.—LIQUID OR DRY VOLUME MAV'S FOR INDIVIDUAL PACKAGES LABELED IN METRIC UNITS

Metric units	
Labeled volume in milliliters (mL) or liters (L)	MAV in mL
3 mL or less	0.5[1].
More than 3 to 8 mL	1.0[1].
More than 8 to 15 mL	1.5[1].
More than 15 to 22 mL	2.
More than 22 to 67 mL	3.5.
More than 67 to 126 mL	5.5.
More than 126 to 170 mL	7.5.
More than 170 to 222 mL	9.
More than 222 to 347 mL	11.
More than 347 to 503 mL	15.
More than 503 to 621 mL	18.
More than 621 to 798 mL	22.
More than 798 to 917 mL	26.
More than 917 to 1.153 L	30.
More than 1.153 to 1.627 L	37.

TABLE 3.—LIQUID OR DRY VOLUME MAV'S FOR INDIVIDUAL PACKAGES LABELED IN METRIC UNITS—Continued

Metric units	
Labeled volume in milliliters (mL) or liters (L)	MAV in mL
More than 1.627 to 2.041 L	44.
More than 2.041 to 2.514 L	52.
More than 2.514 to 3.046 L	59.
More than 3.046 to 4.732 L	74.
More than 4.732 to 5.489 L	89.
More than 5.489 to 7.098 L	104.
More than 7.098 to 8.044 L	118.
More than 8.044 to 10.173 L	133.
More than 10.173 to 11.593 L	148.
More than 11.593 to 16.561 L	177.
More than 16.561 to 18.927 L	207.
More than 18.927 to 23.659 L	237.
More than 23.659 to 26.734 L	266.
More than 26.734 L	1 percent of labeled quantity.

[1] Use laboratory glassware.

TABLE 4.—LIQUID OR DRY VOLUME MAV'S FOR INDIVIDUAL PACKAGES LABELED IN INCH-POUND UNITS.

Inch-pound units			
Labeled volume (fluid ounces)	Liquid MAV (fluid ounce)	Labeled volume (cubic inches)	Dry MAV (cubic inches)
0.50 or less	([1])	0.18 or less	0.03
More than 0.50 to 0.75	0.06	0.18 to 0.49	0.06
More than 0.75 to 2.25	0.13	0.49 to 0.92	0.09
More than 2.25 to 4.25	0.19	0.92 to 1.35	0.11
More than 4.25 to 5.75	0.25	1.35 to 4.06	0.23
More than 5.75 to 7.5	0.31	4.06 to 7.67	0.34
More than 7.5 to 11.75	0.38	7.67 to 10.38	0.45
More than 11.75 to 17	0.50	10.38 to 13.54	0.56
More than 17 to 21	0.63	13.54 to 21.21	0.68
More than 21 to 27	0.75	21.21 to 30.68	0.90
More than 27 to 31	0.88	30.68 to 37.90	1.13
More than 31 to 39	1.00	37.90 to 48.73	1.35
More than 39 to 55	1.25	48.73 to 55.95	1.58
More than 55 to 69	1.50	55.95 to 70.38	1.80
More than 69 to 85	1.75	70.38 to 99.26	2.26
More than 85 to 103	2.0	99.26 to 124.5	2.71
More than 103 to 160	2.5	124.5 to 153.4	3.2
More than 160 to 185.6	3.0	153.4 to 185.9	3.6
More than 185.6 to 240	3.5	185.9 to 288.8	4.5
More than 240 to 272	4.0	288.8 to 335.0	5.4
More than 272 to 344	4.5	335.0 to 443.1	6.3
More than 344 to 392	5.0	443.1 to 490.9	7.2
More than 392 to 560	6.0	490.9 to 620.8	8.1
More than 560 to 640	7.0	620.8 to 707.4	9.0
More than 640 to 800	8.0	707.4 to 1,011	10.8
More than 800 to 904	9.0	1,011 to 1,155	12.6
More than 904	1 percent of labeled quantity.	1,155 to 1,444	14.4
		1,444 to 1,631	16.2
		More than 1,631	1 percent of labeled quantity.

[1] Convert to metric units and use laboratory glassware.

TABLE 5.—COUNT MAV'S FOR INDIVIDUAL PACKAGES LABELED BY COUNT

Labeled count	MAV
51 to 83	2.
84 to 116	3.
117 to 150	4.
151 to 200	5.
201 to 240	6.
241 to 290	7.
291 to 345	8.
346 to 400	9.
401 to 465	10.
466 to 540	11.

TABLE 5.—COUNT MAV'S FOR INDIVIDUAL PACKAGES LABELED BY COUNT—Continued

Labeled count	MAV
541 to 625	12.
626 to 725	13.
726 to 815	14.
816 to 900	15.
901 to 990	16.
991 to 1,075	17.
1,076 to 1,165	18.
1,166 to 1,250	19.
1,251 to 1,333	20.
More than 1,333	1.5 percent of labeled count rounded off to the nearest whole number.

§ 101.250 Maximum allowances for moisture loss.

Reasonable variations caused by the loss or gain of moisture in packaged foods are permitted as specified in this section. The following maximum allowances for moisture loss, expressed as a percentage of the labeled net quantity of contents, are permitted:

(a) No allowance for moisture loss will be made if:

(1) A food, other than a fresh bakery product, is weighed within 7 days following the end of the day of pack, except where the packer provides documentation of moisture loss during this time period, and the documentation has been produced in a manner that complies with paragraph (d) of this section; or

(2) A fresh bakery product is weighed within 1 day following the end of the day of pack, except where the packer provides documentation of moisture loss during this time period, and the documentation has been produced in a manner that complies with paragraph (d) of this section; or

(3) The food is not listed in paragraphs (b) or (c) of this section and thus is not subject to moisture loss; or

(4) The food is packaged in an air tight container (e.g., cans, glass bottles, enclosed in paraffin);

(b) One percent for the following foods: Frozen fruit and frozen vegetables more than 7 days following the end of the day of pack and fresh baked breads, buns, rolls, and muffins more than 1 day, but less than 7 days, following the end of the day of pack;

(c) Three percent for the following foods more than 7 days following the day of pack: Flour, pasta, rice, cheese and cheese products, dried fruits and vegetables, fresh fruits and vegetables, coffee beans, and bakery products other than fresh baked breads, buns, rolls, and muffins; and

(d) A percent based on data that, upon request, is provided to an agency investigator to establish the moisture loss; provided that, the data are gathered through an approach that includes, but is not limited to, all of the following features:

(1) The data are based on 3 control lots with each lot consisting of at least 12 randomly selected individual packages that are collected on the same day, and the total number of randomly selected individual packages in the 3 lots is at least 48;

(2) Each of the individual packages in the control lots is identified and weighed at the time of collection;

(3) All control lots are stored at various locations in the storage site under the same conditions, which are typical for storage of the product (e.g., if the product is typically placed in a sealed case on a pallet and shrink wrapped, the control lots must be stored under those conditions, rather than under laboratory conditions);

(4) All individual packages in the control lots are weighed daily throughout the entire duration of the study;

(5) The maximum allowance for moisture loss is the average percent moisture loss that would be expected with a 97-percent level of confidence for the number of days of storage in view of the individual package weighings in all control lots for those days; and

(6) Where moisture loss varies with climatic changes in environmental conditions, the data are collected at an appropriate time to justify the moisture loss. For example, where an inspection is made of current production at a food processing plant in the middle of July, and moisture loss varies significantly from winter to summer, data collected in January cannot be used to document moisture loss during the inspection.

PART 161—FISH AND SHELLFISH

3. The authority citation for 21 CFR part 161 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

4. Section 161.130 is amended by revising paragraph (c)(1) and adding new paragraph (d) to read as follows:

§ 161.130 Oysters.

* * * * *

(c) * * *

(1) ''Shell oysters'' means live oysters of any of the species, *Crassostrea gigas*, *Crassostrea virginica*, and *Ostrea conchaphila*, in the shell, which, after removal from their beds, have not been floated or otherwise held under conditions that result in the addition of water.

(2) [Reserved]

(d) The oysters shall not have more than 15-percent liquid by weight after packing.

PART 501—ANIMAL FOOD LABELING

5. The authority citation for 21 CFR Part 501 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

6. Section 501.105 is amended by revising paragraphs (a),(b), and (g) and by adding new paragraph (u) to read as follows:

§ 501.105 Declaration of net quantity of contents.

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents. This shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure. If the food is liquid the declaration shall be in terms of fluid measure. If the food is solid, semisolid, or viscous, or a mixture of solid and liquid the declaration shall be expressed in terms of weight. If the food is a fresh fruit, fresh vegetable, or

other dry commodity that is customarily sold by dry measure the declaration statement may be expressed in terms of dry measure. If the food is packaged in a self-pressurized container, the statement shall be in terms of the mass or weight of the food and the propellant that will be expelled when the instructions for use as shown on the container are followed. If there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight, or a solid, semisolid, or viscous product by fluid measure, it may be used. Whenever the Food and Drug Administration determines that an existing practice of declaring net quantity of contents by weight, measure, numerical count, or a combination in the case of a specific packaged food does not facilitate value comparisons by consumers and offers opportunity for consumer confusion, it will by regulation designate the appropriate term or terms to be used for such commodity.

(b)(1) Statements of weight shall be in terms of avoirdupois pound and ounce.

(2) Statements of fluid measure shall be in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof, and shall:

(i) In the case of frozen food that is sold and consumed in a frozen state, express the volume at -18 °C (0 °F);

(ii) In the case of refrigerated food that is sold in the refrigerated state, express the volume at 4 °C (40 °F);

(iii) In the case of other foods, express the volume at 20 °C (68 °F);

(3) Statements of dry measure shall be in terms of the U.S. bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof.

* * * * *

(g) The declaration of net quantity of contents shall provide an accurate statement of the quantity of contents of the package. For purposes of this section, an accurate statement is one that conforms to all requirements for the declaration set forth under part 101 of this chapter except for §§ 101.200 and 101.201. Sections 101.240, 101.245, and 101.250 of this chapter identify what constitutes a reasonable variation in net content declarations that is the result of loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice. Maximum allowance for moisture loss as permitted under § 101.250(c) applies to dry animal food. All net contents measurements shall be made in accordance with the procedures and methodology set forth in part 101 of this chapter. Any net quantity of contents declarations that overstate the amount of product in the container by an amount that is more than that can be attributed to a reasonable variation under these regulations will misbrand the product under section 403(e) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

(u) ''Dry animal food'' means animal food packaged in paperboard boxes or kraft paper bags that has 13 percent or less moisture at time of pack.

Dated: January 30, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

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Part III

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Adjustments to Individual Baselines for the Reformulated Gasoline and Anti-Dumping Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5696–2]

Regulation of Fuels and Fuel Additives: Adjustments to Individual Baselines for the Reformulated Gasoline and Anti-Dumping Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Under the Clean Air Act (CAA or the Act), as amended in 1990, the Environmental Protection Agency (EPA or the Agency) promulgated anti-dumping regulations for conventional gasoline, that is, gasoline not certified as reformulated gasoline (RFG). These regulations require that conventional gasoline not be more polluting than it was in 1990. They also include provisions for the development of individual refinery baselines. The regulations also include provisions which allow a refinery to obtain an adjusted baseline under certain, limited circumstances. Today's regulations modify the requirements of one baseline adjustment and specify the requirements of two new baseline adjustments.

Specifically, today's rulemaking modifies the requirements for obtaining a baseline adjustment due to the production of JP–4 jet fuel in 1990. This rule also allows a baseline adjustment for refiners who are now unable to acquire extremely sweet crude oil (that is, crude oil relatively low in sulfur) that had been available in 1990 and from which the gasoline used to develop a 1990 individual baseline was obtained. Finally, this rule allows a baseline adjustment for refineries which have both extremely low baseline sulfur and olefin levels.

The criteria for obtaining any baseline adjustment are stringent. As a result, only those refineries which would experience a severe economic burden due to the regulations are allowed the relief provided by a baseline adjustment. Since few refineries qualify for these adjustments and requiring compliance without a baseline adjustment would be of minimal benefit to the environment, the environmental impact of allowing the baseline adjustments is negligible.

DATES: This rule will be effective on April 22, 1997.

ADDRESSES: Materials relevant to this final rulemaking (FRM) are contained in Public Docket No. A–95–03. Materials relevant to the RFG final rule are contained in Public Dockets A–91–02 and A–92–12. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4287. To request copies of this document, contact Delores Frank, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

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I. Electronic Copies of Rulemaking Documents

A. Technology Transfer Network Bulletin Board System (TTNBBS)

An electronic copy of this notice is available on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a phone line and a high-speed modem per the following information:

TTNBBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Help-line: 919–541–5384
Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the top menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9 * * * Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPped). Today's notice can be identified by the following title: JP4FRM.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

>D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After you have downloaded the desired files, you can quit the TTNBBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software to which the document is downloaded, changes in page format may occur.

B. Internet

Rulemaking documents can also be located on the Internet as follows:

World Wide Web

http://www.epa.gov/omswww

Telnet

telnet ttnbbs.rtpnc.epa.gov

FTP

ftp://ftp.epa.gov
Then change the directory (CD) to /pub/gopher/OMS/

Gopher

gopher://gopher.epa.gov:70/11/Offices/Air/OMS
Alternatively, go to the main EPA gopher and follow the menus:
gopher.epa.gov
EPA Offices and Regions
Office of Air and Radiation
Office of Mobile Sources

II. Regulated Entities

Entities that could be regulated by this action are those that produced gasoline in 1990 and which have an individual baseline per part 40 section 80.91 of the Code of Federal Regulations (CFR). Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refineries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria at 40 CFR 80.91. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Introduction

The standards that a refiner must comply with for certain aspects of the reformulated and conventional gasoline regulations are based on the refiner's individual baseline.[1] An individual baseline is the set of fuel parameter values, emissions values, and component volumes which represent the quality and quantity of the refiner's 1990 gasoline. (See 40 CFR 80.91.) EPA's regulations establish requirements for developing an individual baseline. For special situations, the Agency has allowed the baseline fuel parameters, emissions values, and component volumes to be adjusted. Such situations have included unforeseen downtime of a gasoline blendstock producing unit, non-annual maintenance, work-in-progress, and JP–4 jet fuel production.

This FRM allows baseline adjustments for three situations where parties would suffer an extreme economic burden due to the original regulations if relief were not granted. Specifically, this rule (1) Revises the requirements for a baseline adjustment due to the production of JP–4 jet fuel in 1990, (2) provides an adjustment to the baseline sulfur values of certain refineries for instances where extremely sweet crude oil (which is no longer available) was used in 1990 gasoline production, and (3) adds a provision for adjusting refinery baselines which have very low values for both sulfur and olefins.

In general, for refiners who qualify for one or more of the baseline adjustments finalized today, EPA will apply the adjustments to gasoline produced in 1996. In the August 1995 Notice of Proposed Rulemaking (NPRM) EPA indicated that any adjustments finalized under this rulemaking would apply to a refiner's 1995 compliance determination. However, EPA cannot retroactively apply a rulemaking, even one that provides a measure of regulatory relief. Many refiners affected by today's rule received baseline adjustments under the stay promulgated at 60 FR 40006 (August 4, 1995). Because these refiners have the same adjusted baseline under the stay that they would receive as a result of today's action, they are unaffected by whether or not today's rule applies to 1995 compliance determinations. For those refiners who did not receive an adjusted baseline, EPA will consider this rule in its review of 1995 compliance determinations.

IV. JP–4 Baseline Adjustment

A. Introduction

JP–4 jet fuel, the use of which is being phased out by the U.S. Department of Defense, was produced in 1990 by many refiners under contract with the Defense Department. Because refineries will most likely use the JP–4 blendstock in gasoline, the JP–4 fuel must first be processed through a reformer to increase its octane to suitable gasoline levels. Due to the high aromatic content of the reformer streams, the toxic emissions of the ''new'' gasoline (calculated using the Simple and Complex Models) will likely increase relative to the gasoline's 1990 values. In addition, it is possible that gasoline production will increase (relative to 1990 production) due to movement of blendstocks directly and indirectly from JP–4 to gasoline. The impact of the increase in aromatic content and/or additional volume due to JP–4 phase-out will affect certain refiners more than others.

The December 1993 regulations[2] already provide for an adjustment to a refiner's individual baseline due to production of JP–4 in 1990 if three criteria are met. These criteria were designed to ensure that the original adjustment would result in de minimis environmental impact and would remove the extreme burden on the refiner.[3] First, under the original adjustment, JP–4 baseline adjustments are allowed only for refiners who do not or will not in the future produce RFG. If a refiner granted such an adjustment subsequently produces RFG, its conventional gasoline compliance will be subject to its original unadjusted baseline during the current averaging period and all subsequent years. Second, a JP–4 baseline adjustment is available primarily to qualifying single-refinery refiners. A multi-refinery refiner could also receive an adjustment if each of its refineries produced JP–4 in 1990 and if each refinery also meets the other requirements for obtaining the adjustment. Third, to receive an adjustment, the refiner is required to show that a significant burden would exist if no baseline adjustment was allowed. The original regulations require that the ratio of a refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.5 in order to be defined as a significant burden on the refiner.

In the August 4, 1995 NPRM (60 FR 40009), EPA proposed modified provisions related to JP–4 baseline adjustments. These provisions were essentially the same as those contained in a direct final rulemaking (DFRM) which was published at 59 FR 36944, July 20, 1994.[4] Specifically, EPA proposed the following three conditions that would have to be met by a refiner who petitions for a baseline adjustment due to JP–4 production in 1990. The first condition applies to multi-refinery refiners while the second and third

[1] In general, the anti-dumping provisions apply to refiners or importers of conventional gasoline. The baseline adjustment provisions finalized in today's notice, however, are applicable only to refiners and their refineries.

[2] 59 FR 7716, February 16, 1994.

[3] Alabama Power Company vs. Costle, 636 F.2d 323–357 (D.C. Cir. 1979).

[4] EPA withdrew this DFRM since EPA received adverse comments on the changes specified in the DFRM with regard to JP–4 baseline adjustments. As announced in the DFRM, such provisions would take effect only if no persons submitted adverse comments or requested an opportunity to comment. For more discussion, see the support document, ''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis'', Air Docket A–95–03.

conditions apply to all refining companies.

(1) The Qualifying Refiner Must Have Produced JP–4 at One or More of Its Refineries in 1990

The original JP–4 baseline adjustment provisions for multi-refinery refiners require that each refinery must have produced JP–4 in 1990. This revision would allow a refiner to obtain this baseline adjustment even if only one of its refineries produced JP–4 in 1990 (and if the refiner and its refineries also meet the other criteria specified for this baseline adjustment). EPA believes it may use its discretion to provide relief for a multi-refinery refiner even if only one of the refiner's refineries produced JP–4 in 1990 (provided that the refiner or refinery meets the other requirements required for a JP–4 baseline adjustment). If a multi-refinery refiner qualifies for a baseline adjustment under this criterion, it must then calculate the adjusted baseline of the refinery(ies) which actually produced JP–4 in 1990 and determine its anti-dumping compliance on an aggregate basis.

(2) The Qualifying Refiner Must Have a 1990 JP–4 to Gasoline Ratio Greater Than or Equal to 0.15 (See Discussion Below Regarding JP–4 Baseline Adjustment Ratio)

(a) For each individual refiner, if all of its refineries produced JP–4 in 1990, the refiner may comply with the anti-dumping requirements on an individual or aggregate basis; or

(b) On a refiner-wide basis, in which case the refiner must determine an individual baseline for each of its refineries but must comply with the anti-dumping requirements on an aggregate basis.

(3) The Qualifying Refiner Must Not Produce Reformulated Gasoline (RFG) at Any of Its Refineries Now or in the Future

The comments received on this proposal are discussed below. None of the comments provided new information or supportive data. Therefore, EPA today finalizes this provision as proposed, for the reasons described in the NPRM.

B. General Comments on the Proposal

Summary of Comments

Generally, many commenters felt the original eligibility requirements for receiving a JP–4 baseline adjustment are unnecessarily restrictive. They felt that EPA's overriding concern should be the impact of the baseline adjustments on the environment, and they suggested that most refineries meeting the JP–4 criteria operate in rural, clean air (i.e., attainment) areas.

Several commenters opposed the regulation change, stating that it would be more equitable for all JP–4 producers to get an adjustment, regardless of ratio, aggregation, or RFG production. Commenters stated that this position is based on the fact that all JP–4 producers were meeting a market demand, and therefore should not be selectively penalized. Furthermore, these commenters felt that elimination of post-1995 demand for JP–4 causes all baselines to be unrepresentative of current and future operations. Therefore the JP–4 phase-out and anti-dumping regulations may have unintended adverse effects on the regulated community of former JP–4 suppliers. These commenters suggested that a better approach would be to allow an adjustment for all JP–4 producers, and allow refiners to rethink aggregation decisions. The commenters felt this would ''level the playing field'' and simplify the regulations.

Analysis and Conclusion

EPA's authority to grant exceptions to this requirement of the CAA is very limited. EPA does not believe it is appropriate, given the applicable facts and this limitation, to allow adjustments for all JP–4 producers. Exceptions to this requirement of the Act should only be allowed for cases of extreme regulatory burden with minimal environmental impact, and not all refiners who produced JP–4 in 1990 are extremely burdened by the requirements of the RFG and anti-dumping programs. Today's action slightly broadens the JP–4 baseline adjustment criteria, but continues to allow adjustment only where extreme burden is demonstrated.

C. Comments on the Proposed Ratio of JP–4 Production to Gasoline Production

Summary of Comments

Some commenters opposed the change in production ratio to 0.15, stating that the 0.15 ratio is arbitrary and that EPA has provided no evidence of hardship for the three or four refineries which would be affected. One commenter felt that if the environmental impacts are minimal at 0.15, they would be even less for those below the 0.15 production ratio. They stated that as little as two percent JP–4 production can be a significant aspect of refining operations; adjusting for production, this low percentage may have little impact on the baseline but would provide necessary relief for refiners who have experienced increasing levels of benzene and aromatics. Commenters also felt that refineries on the ''wrong side'' of the ratio will continue to argue for special exemptions; any ratio arbitrarily provides relief to some while denying it to others.

Commenters also stated that it is impossible for the public to judge whether a hardship even exists. They felt that the ratio criterion is only one of several criteria which should be used to determine hardship. They argued that the regulation should not be limited to just one criterion, but rather it should include alternative tests for hardship. Several alternative criteria for determining hardship were suggested by commenters. One commenter suggested that EPA should evaluate the financial penalty of noncompliance relative to the refiner's size and profit to determine extreme burden. One commenter proposed that a straight production volume of 100,000 gallons of JP–4, rather than a jet fuel-to-gasoline production ratio, would be a more appropriate baseline adjustment criterion. In addition, commenters suggested that EPA should consider the historical pattern of JP–4 production for a refinery, stating that a refinery that produces JP–4 over a long period will have greater hardship converting that product to gasoline.

Finally, it was suggested that EPA needs to recognize that the industry is capital-intensive and that refineries should be encouraged to make the necessary capital investments.

Analysis and Conclusion

As stated before, in addition to minimal environmental impact, regulatory burden must also be considered before an exception to the regulations can be made, and a baseline adjustment allowed. As discussed in the December 1993 Regulatory Impact Analysis (RIA), the JP–4 to gasoline production ratio is the best measure found by EPA to estimate and quantify this burden. However, based on information received by EPA subsequent to the initiation of the RFG program, the original 0.5 ratio does not provide the relief intended by the Agency. Using industry data, EPA proposed a more appropriate ratio of 0.15, and stated that a few more (three or four) refineries could potentially benefit from this change in the ratio. Although EPA agrees with commenters that other means of showing extreme burden of the regulations may exist, EPA has not found any which seem as appropriate (particularly with respect to providing a quantitative means of establishing burden). Additionally, EPA believes that such alternative tests would be difficult to implement at this

stage in the baseline approval process. Finally, EPA believes that limiting this analysis to 1990 situations is most consistent with statutory structure.

D. Comments on the Aggregation and RFG Production Restrictions

In the August 1995 NPRM, EPA proposed that a multi-refinery refiner, could qualify for a JP–4 baseline adjustment even if only one of its refineries produced JP–4 in 1990. However, that refiner would have to determine its compliance on an aggregate basis and could produce no RFG at any of its refineries. A detailed discussion of the basis of these requirements can be found in the support document for this rule, ''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline-Detailed Discussion and Analysis,'' Air Docket A–95–03.

Summary of Comments

Commenters supporting the proposed modifications to the regulation provided several points to support the changes. Primarily, they stated that without these changes, it would be impossible for a multi-refinery refiner to qualify for an adjustment. Thus, according to commenters, the regulation would not provide the relief intended by EPA. Some commenters supporting the proposed changes to the regulation endorsed the need for change in the aggregation requirements of the JP–4 adjustment. Commenters felt that such requirements would further restrict the business decisions of a multi-refinery refiner.

Many commenters addressed the RFG production restrictions placed on a refiner that receives a JP–4 adjustment. Commenters felt that prohibiting RFG production by these refiners may cause a refiner not to produce RFG for areas where it is needed. Also, commenters argued that some refiners who qualify for the JP–4 adjustment may have already produced RFG. These commenters felt that the environmental impact of allowing RFG production would be minimal.

Analysis and Conclusion

EPA is retaining the proposed requirement that a multi-refinery refiner qualifying for a JP–4 baseline adjustment, for which not all of its refineries produced JP–4 in 1990, must determine its compliance on an aggregate basis. Under the regulations promulgated today, such a refiner is able to obtain a JP–4 baseline adjustment because it has determined its JP–4 to gasoline ratio on an aggregate basis. EPA continues to believe that it is appropriate to thus require such a refiner to determine its anti-dumping compliance on an aggregate basis as well. A multi-refinery refiner for which each of its refineries meets the JP–4 baseline adjustment criteria individually may determine its compliance on an aggregate or non-aggregate basis.[5]

EPA continues to believe that prohibiting RFG production is a critical criteria for this baseline adjustment as it is the best way to ensure that no ''dumping'' will occur. EPA does not consider this requirement to be unduly restrictive.

E. Comments Regarding the Effect of JP–4 Production on Refinery Operation

Summary of Comments

Several commenters, including both those supporting the regulation changes and those opposing them, stated that EPA should give full consideration to the effects of JP–4 production on refinery operations. These commenters pointed out that 1990 JP–4 production can limit gasoline production at a refinery, and that premium gasoline, the most profitable gasoline to produce, is most affected by baseline limitations. Commenters stated that JP–4 production limited small refiners with low conversion configurations who could not fractionate excess gasoline into distillate.

Analysis and Conclusion

EPA recognizes that there are difficulties in the conversion of refinery operations from JP–4 production to gasoline production, and that production volumes may also be limited. EPA also recognizes that the burden of the conversion and compliance with the RFG and anti-dumping requirements differs from refiner to refiner. However, as stated previously, EPA's authority in allowing exceptions to the regulations in the form of baseline adjustments is limited. Environmental impact and regulatory burden are the only factors EPA considered in determining what type of baseline adjustment, if any, should be allowed. EPA believes that the most appropriate measure of the regulatory burden in this context is the JP–4 to gasoline ratio, discussed above.

[5] However, as for all refiners, once the decision to determine compliance on an aggregate basis is made, compliance must be made on that basis for all future compliance periods.

V. Crude Oil Quality Baseline Adjustment

A. Introduction

Crude sulfur content is increasing nationwide.[6] The ability of refiners to deal with this change varies. EPA is aware that the quality of the crude oil (with regard to sulfur content) available to refiners in PADD IV has been deteriorating faster than crude oil in other regions of the U.S. since 1990.[7] In addition, refiners in this region do not have access to foreign crude oil imports other than those from Canada. Thus, the quality of crude oil available to these refiners, from conventional or alternative sources, is limited. Prior to promulgation of the December 1993 final rule, EPA was not aware that the deterioration of crude oil available to certain refiners (in regard to increasing sulfur content) might force them to cease operation since the burden of compliance might be prohibitively expensive.

The anti-dumping requirements contained in the December 1993 regulations generally do not allow baseline adjustments for changing crude oil quality or availability. However, as discussed in the preamble to the December 1993 final rule, EPA recognized that a refiner's ability to comply with its individual baseline can be difficult due to changes in crude oil supplies, markets, and fuel specifications. As with the work-in-progress baseline adjustment (40 CFR 80.91) and the original JP–4 baseline adjustment (40 CFR 80.91), EPA believes it is appropriate to provide baseline adjustments in situations where the anti-dumping regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental benefit. Thus, EPA is finalizing such a baseline adjustment where a dramatic increase in crude sulfur content has occurred which could severely affect the anti-dumping compliance of refiners with extremely low baseline sulfur levels.

EPA expects a minimal environmental impact from allowing the low-sulfur crude baseline adjustment (based on the criteria finalized today) for two reasons. First, only a few refineries are expected to qualify for the adjustment and second, the total production volume of these refineries is marginal.

[6] E.J. Swain, ''U.S. crude slate continues to get heavier, higher in sulfur,'' *Oil & Gas Journal,* p. 37, January 9, 1995.

[7] Ibid.

B. General Comments on the Proposal

Summary of Comments

Several commenters felt that EPA was unjustified in granting a small number of refiners special treatment for what is a ''fact of life'' for all refiners. They felt this proposal appears to satisfy certain refiners at the expense of others. Some commenters claimed that since sour crude oil is typically less expensive than sweet crude oil, refiners can invest in the appropriate level of desulfurization capacity to refine the crude into a competitive crude slate. On the other hand, one commenter asserted that it is not appropriate to grant a waiver to purchase sour crude oil supplies, and then allow the production of gasoline which would not meet the anti-dumping standards.

Other commenters opposing the proposal felt that, although it is very restrictive, they could not support concessions for only a few regulated parties. They contended that EPA should force a capital solution by the affected refiners, and not allow the adjustment.

Analysis and Conclusion

In finalizing the low-sulfur crude baseline adjustment, EPA is using the authority granted to it by Congress to allow limited exceptions under narrow circumstances. As with the other baseline adjustments mentioned above, the appropriate criteria for obtaining an adjustment are designed to be stringent in order to provide relief only in cases of extreme burden and to maintain the environmental benefits of the (anti-dumping) program. EPA is not allowing adjustments for all refiners who have experienced increasing crude sulfur levels since 1990 or for refiners who will experience such increases in the future. Thus, the existing provisions in part 40, section 80.91 of the regulations still apply, i.e., no adjustments for crude oil quality or availability changes are allowed unless the criteria finalized today are met.

C. Comments on Crude Oil Quality Changes Since 1990

In the NPRM, EPA requested comments on inherent crude oil properties, other than sulfur, which have significantly deteriorated since 1990 and which directly and significantly affect the values of any fuel parameters for which an individual baseline value must be determined. In addition, EPA requested comments on future crude oil trends (i.e. whether crude sulfur content will continue to increase or stabilize), specifically on a regional or PADD basis.

Summary of Comments

No commenter specified crude oil properties, other than sulfur, which have significantly deteriorated since 1990 and which directly and significantly affect the values of any fuel parameters for which an individual baseline value must be determined. Additionally, no commenter discussed future crude oil property trends. Commenters did discuss the RFG and anti-dumping programs, specifically with regard to individual baselines, as indicated below.

One commenter in support of a baseline adjustment commented that the existing anti-dumping regulations have the unintended consequence of placing a disproportionately heavy burden on producers of clean gasoline which ultimately could lead to a deterioration of air quality. Specifically, the commenter stated that refiners who produced clean gasoline in 1990 are held to stricter standards than those who produced dirtier gasoline in 1990. Furthermore, the difficulties of the more stringent standards become more acute when the quality of a refiner's gasoline is affected by circumstances beyond the refiner's control.

Another commenter indicated that driving the cleanest refiners out of business was not an intended effect of the RFG and anti-dumping programs, and would not promote protection of public health or the environment. This commenter felt the regulations should recognize the needs of the cleanest refiners and afford them the opportunity for continued operation, by allowing a low sulfur crude adjustment. The commenter stated that despite increased sulfur content, clean refiners would still produce very clean gasoline. Furthermore, the commenter indicated that without an appropriate and sufficient baseline adjustment, clean refiners may have to cease operation which could subsequently lead to fewer clean refineries in the petroleum industry.

In regard to standard pipeline procedures, one commenter felt that certain crude oil properties were beyond the control of downstream refiners. Therefore, the commenter stated that refiners should be allowed to adjust baselines annually. As an example, the commenter stated that perhaps such an adjustment would be based on the naphtha fraction of the crude oil received from the Alaska North Slope.

Analysis and Conclusion

EPA disagrees with the comment that refiners who produced relatively cleaner gasoline in 1990 are held to a stricter standard than those who produced relatively dirtier gasoline in 1990. The same basic standard applies to all refiners with an individual baseline, that is, they must produce gasoline as clean as the gasoline they produced in 1990.

As indicated above, the original regulations generally do not allow baseline adjustments for changing crude oil quality or availability. However, during the review and approval of baselines, EPA was informed that the depleted supply of very sweet crude oil which had been processed in 1990 could force one or more refiners to cease gasoline production. If a refiner processed a very sweet crude (e.g., less than 500 ppm) in 1990, its baseline sulfur level could be 50 ppm or lower. Because of increasing sulfur content in the crude oil supply, if that refiner currently processes relatively sweet crude oil (e.g., less than 1200 ppm sulfur), it would likely be unable to comply with its individual baseline without severe economic burden due to its extremely low baseline sulfur level. It may also be extremely expensive for refiners to add refinery units in order to ensure compliance. For example, gasoline sulfur may be lowered by hydro-desulfurization of gasoline components and/or by charging the gasoline to blendstock producing units. This option is expensive and could require the installation of considerable new refining equipment. It could also require extensive volumes of hydrogen, which may be hard to produce within a given refinery. Thus, compliance options for such a refiner might be prohibitively expensive.

In response to the comment on standard pipeline procedures, the purpose of the low-sulfur crude baseline adjustment is to provide refiners limited relief in situations where the anti-dumping regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental benefit. Although a few refiners will be granted the low-sulfur crude baseline adjustment, these refiners must realize that they (like all other refiners) will be responsible for future adaptations to changing crude sulfur levels. Baseline adjustments are intended to reduce, not eliminate, the burden associated with regulatory compliance. If the burden were completely eliminated, then the required criteria would no longer be met and the goals of the anti-dumping program would no longer be fulfilled.

D. Comments on the Proposed Criteria for a Baseline Adjustment

In the NPRM, EPA proposed seven criteria that a refiner would have to meet to qualify for the low-sulfur crude baseline adjustment. Comments on these criteria are discussed below.

Criterion 1: *The refinery produces no reformulated gasoline.*

The anti-dumping requirements, in general, apply to all conventional gasoline whether or not RFG is produced. Under this adjustment, however, no dumping will result from RFG production. If a refiner who receives this baseline adjustment subsequently produces RFG, the refiner's conventional gasoline compliance will be subject to its original unadjusted baseline during the current averaging period and in all subsequent years. However, in the NPRM, EPA also proposed that the eligibility of any refinery of a multi-refinery company for this baseline adjustment is not dependent on the RFG production of the refining company's other refineries.

Summary of Comments

Some commenters stated that if a baseline adjustment were made, the prohibition of RFG production would be unnecessary and overly restrictive. Commenters added that restrictions on baseline adjustment qualification may limit a refiner's ability to adapt to future, unforeseen market changes. Commenters stated that this restriction would have an adverse impact on cleaner operations by limiting flexibility and competition, and could lead to a future shortage of RFG. It was pointed out that many refiners would be prevented from producing RFG if they were forced to revert back to their unadjusted baselines. Commenters argued that, if refiners were forced to choose between RFG and conventional fuel production based on artificial factors rather than a response to market demand, refiners with higher sulfur baselines would be able to compete in both markets simultaneously with less competition. Therefore, the commenters suggested that EPA should allow the baseline adjustment for refiners that meet the other proposed criteria, regardless of their RFG production.

Analysis and Conclusion

EPA considered the above comments in its decision, but maintains that a refiner must not produce RFG to qualify for a baseline adjustment. EPA believes that refiners who were able to adjust refinery operations (through capital investment or process modifications) to produce RFG should be able to accommodate increases in crude sulfur content. In addition, the Agency believes that prohibiting RFG production is the best way to ensure that ''no dumping'' will occur. EPA does not believe that this requirement is unduly restrictive. Therefore, EPA is finalizing the proposed criterion that a refiner must not produce RFG to qualify for this baseline adjustment.

Criterion 2: *A refiner has an unadjusted baseline sulfur value less than or equal to 50 ppm.*

EPA believes that requiring a threshold sulfur content of 50 ppm is appropriate because higher baseline levels would indicate that the refiner's 1990 crude slate was not extremely low in sulfur. In addition, a refiner with a higher baseline sulfur level should have sufficient leeway, e.g., types of crude oil supplies used or available and processing flexibility, to comply with its individual baseline. In the NPRM, EPA requested comments on the appropriateness of requiring a threshold sulfur content, and on the suitability of 50 ppm or another concentration as a threshold level.

Summary of Comments

Most commenters opposing the baseline adjustment were concerned that such an adjustment would not result in equal treatment for all, and would give some refiners an unfair advantage. These commenters contended that the rule should not be applied to only those with sulfur levels below 50 ppm or any other number, because increased crude sulfur impacts every refiner regardless of its baseline. Commenters added that all refiners are faced with changing crude oil quality; refiners must consider these changes when planning future capital investments and product slates. Furthermore, many commenters asserted that there is no basis for the 50 ppm threshold proposed by EPA. They indicated that this level should be significantly raised or eliminated. In addition, one commenter argued that requests for adjustment could go beyond crude sulfur content, though the commenter did not specify which other crude oil parameters could be investigated. Finally, commenters contended that this rule could be challenged based on the competitive advantage gained by exempt parties.

Analysis and Conclusion

As with any baseline adjustment, EPA's authority to allow adjustments is limited. As stated previously, exceptions to this requirement of the Act will only be allowed for cases of extreme economic burden with minimal environmental impact. Not all refiners who have experienced increases in crude oil sulfur levels are unduly burdened. In order to quantify this burden, and for the reasons stated earlier, EPA proposed a 50 ppm threshold value for the crude oil sulfur content of a refiner's unadjusted baseline. Because commenters did not suggest another threshold value and EPA is not aware of another value that would be more appropriate, the Agency is finalizing an unadjusted baseline sulfur level of 50 ppm. Refiners must comply with this sulfur criterion to qualify for a low-sulfur crude baseline adjustment.

Criterion 3: *The affected refinery of a multi-refinery refiner may not be aggregated with the refiner's other refineries for compliance purposes.*

EPA proposed that this baseline adjustment would be available to refineries of both single-refinery and multi-refinery companies. However, EPA also proposed that the affected refinery of a multi-refinery refining company may not be aggregated with the company's other refineries for compliance purposes. If a refinery that is granted a low-sulfur crude baseline adjustment is subsequently included in an aggregate baseline, its conventional gasoline compliance will be subject to its original unadjusted baseline during the current averaging period and in all subsequent years. Therefore, to qualify for a low-sulfur crude baseline adjustment, the affected refinery of a multi-refinery company may not be aggregated with the refining company's other refineries for compliance purposes.

Summary of Comments

Commenters opposing the baseline adjustment proposal suggested that EPA should not tie eligibility for the adjustment to aggregation. If there is a need for adjustment, it should affect the refinery only, without the need to revert back to the unadjusted baseline.

Analysis and Conclusion

EPA agrees that allowing refiners to comply with the anti-dumping requirements on an aggregate basis provides flexibility. However, the Agency still believes that refiners should not be able to aggregate and also receive a low-sulfur crude baseline adjustment for one of its refineries. Because the ability to aggregate is limited to multi-refinery refiners, such refiners have more flexibility than single refiners in regard to baseline compliance. Thus, they already have

some means of reducing the effect of increasing crude sulfur on their compliance. EPA believes it would be inappropriate, and possibly anti-competitive, to allow a refinery receiving this baseline adjustment to also be included in an aggregate baseline.

Criterion 4: *The installation of the refinery units necessary to process higher sulfur crude oil supplies to comply with the refinery's actual (i.e., unadjusted) baseline would cost $10 million or be greater than or equal to 10 percent of the depreciated book value of the refinery as of January 1, 1995.*

The purpose of this provision is to ensure that baseline adjustments are limited to cases of extreme burden or economic hardship. (This is the same requirement for economic burden that must be met by a refiner seeking a work-in-progress baseline adjustment.) EPA requested comments on this criterion and whether the specified values of $10 million or 10 percent are adequate given the type of unit (e.g., hydrotreater) that a refiner would have to install in order to comply. EPA also requested comments on (1) the economic burden, if any, of producing and selling gasoline blendstocks in lieu of finished gasoline, and (2) the economic burden of complying with an unadjusted baseline under the circumstances described above by modifying refinery operations in ways other than installing major refinery units.

Summary of Comments

Most commenters supported the proposed criterion of $10 million or 10 percent and stated that this criterion is fair and appropriate. One commenter stated that refining equipment is expensive and it is not difficult for a refiner to spend $10 million. Furthermore, the commenter indicated that the 10 percent depreciation value was not a significant hurdle either.

Commenters also expressed concern that if this adjustment were not allowed, refiners would be forced by the regulation to produce blendstocks in lieu of gasoline. They stated that the discounts refiners would be forced to give for at least some of those blendstocks would be too great to remain viable; refiners could not profitably produce blendstocks in lieu of gasoline. The commenters contended that the decision to produce gasoline is dictated by refinery design and marketing. One commenter added that restricting the ability to freely choose the most profitable product mix would be an economic disadvantage.

In response to the second request, nearly all commenters agreed that increases in crude sulfur directly (but not linearly) lead to increases in gasoline sulfur, unless major structural and operational modifications are made to the refinery (assuming the necessary equipment is not already in place.) Whether and how EPA should address this situation, though, is a point of contention.

One commenter, however, stated that changes in crude sulfur are a poor indicator of gasoline sulfur levels. This commenter suggested that it would be more appropriate to consider catalytic cracking unit (catcracker) feed sulfur. This suggestion applies to refineries without vacuum units, which catcrack reduced crude. Catcracker sulfur can only be reduced by either lowering the distillation end point or hydrotreating the feed or the blendstock. The commenter also stated, though, that lowering the end point artificially forces a refiner to operate at less than optimum conditions. Furthermore, hydrotreating the blendstock stream is impractical since it reduces the octane value of the blendstock and forces higher reformer severity. The commenter added that feed stream hydrotreatment is expensive.

Analysis and Conclusion

EPA agrees that a refiner could be subject to an extreme economic burden if it were forced to produce blendstocks in lieu of gasoline or to significantly modify refinery operations in order to comply with the anti-dumping regulations (although some refiners may produce blendstocks or modify operations at a high cost for other reasons). As a result, EPA believes that limited relief from these potential burdens is necessary and can be provided through a low-sulfur crude baseline adjustment which the Agency is finalizing today.

EPA agrees that it may not be difficult for a refiner who meets the other criteria specified for this baseline adjustment to spend $10 million to reduce sulfur in order to comply with the anti-dumping requirements. Nonetheless, EPA believes this economic criteria is essential for showing extreme economic burden, and thus is retaining this provision as proposed.

EPA generally agrees with the comment that changes in crude sulfur are a poor indicator of gasoline sulfur levels. However, given the other criteria that a refiner must meet to obtain this baseline adjustment, particularly the low threshold values for baseline gasoline sulfur and crude sulfur changes, EPA believes that it is appropriate to consider the influence of extremely low crude sulfur levels on extremely low baseline sulfur levels. As will be discussed below, EPA is not basing the actual adjustment on the relationship between crude sulfur and baseline sulfur levels.

Criterion 5: *The refiner has access to a geographically-limited crude oil supply.*

EPA proposed that a refiner must show that it could not reasonably or economically obtain crude oil from an alternative source that could be refined into conventional gasoline in compliance with the refiner's unadjusted baseline. EPA requested comment on this proposed provision and on criteria that should be used to evaluate ''reasonably and economically available''.

Summary of Comments

Small refiners with restricted operational flexibility and limited financial access supported the proposal. They felt that without more than the 125 percent flexibility given in the original regulation (i.e., simple model anti-dumping compliance for sulfur), crude sulfur increases would force very clean small refiners with low baselines out of business. One commenter stated that refiners in the Rocky Mountains have traditionally relied on very sweet crude oil supplies which have historically been available in the area. However, the sulfur content of Rocky Mountain crude oil has increased at a greater rate than that of crude oil in the rest of the country. This commenter stated that these refiners realistically only have access, due to geography and economics, to crude oil supplies imported at the Canadian border.

One commenter suggested that EPA should provide examples of refiners meeting this requirement (e.g., all single-refinery refiners in land-locked states). This commenter also suggested additional criteria EPA could consider in allowing this adjustment, such as the distance from a particular refinery to alternative sources of low sulfur crude supplies, the size of the refinery, the ability of the refiner to access and transport such crude oil supplies, and the extent to which the viability of the refiner is threatened by the cost of obtaining alternative crude oil supplies. Another criterion that was suggested would be the increase in the average sulfur content of the crude slate used for gasoline production between 1990 and 1994.

Analysis and Conclusion

Although EPA agrees with the importance of evaluating the

information described in the above suggestion, it does not believe it is necessary to impose additional specific criteria for determining who should qualify for a low-sulfur crude baseline adjustment. EPA will consider these factors in determining whether a refinery meets this criterion and will evaluate petitions for this low-sulfur crude baseline adjustment on a case-by case basis. EPA is finalizing this provision as proposed.

Criterion 6: *The refiner has experienced an average crude sulfur increase greater than or equal to 25 percent since 1990.*

EPA proposed that the highest annual-average crude sulfur slate used during the period 1991–1994, inclusive, be compared to the 1990 sulfur level to determine if the ''25 percent'' criterion is met. Comments were requested concerning the level of difference between 1990 and post-1990 crude sulfur contents that should exist in order to obtain an adjustment, and whether 1991–1994 is an appropriate comparison period or whether some other comparison should be established. The Agency also requested comments as to whether it would be appropriate, and feasible, to distinguish crude oil supplies used solely for gasoline production from crude oil supplies used to produce other refinery products. If such distinction were possible, EPA believes it would be appropriate to base all calculations (pertaining to this adjustment) only on the volumes of each crude used to produce gasoline.

Summary of Comments

Opponents to the proposal were concerned that this adjustment rewards refiners that purchased higher sulfur crude oil supplies after 1990. They indicated that the trend toward sour crude oil supplies was recognized during the Regulatory Negotiation, and that the annual averaging and 125 percent compliance provisions for conventional gasoline were created to address the situation. These commenters felt that if the 125 percent compliance level is not sufficient, it should be changed for all parties.

Some commenters supporting this baseline adjustment indicated that it is feasible to distinguish crude oil supplies used solely for gasoline production from crude oil supplies used to produce other refinery products, and that it would be appropriate to evaluate this criterion based only on the crude used for gasoline production.

Analysis and Conclusion

Although the trend toward sour crude oil supplies was recognized in the Regulatory Negotiation, the quality of the crude oil available to refiners in PADD IV has been deteriorating faster than the rest of the U.S. since 1990. As a result, some refiners with very clean baselines have found it very difficult to comply with the anti-dumping regulations. EPA is finalizing the low-sulfur crude baseline adjustment for those refiners who qualify for the adjustment based on the criteria finalized today. However, EPA believes that the criteria are necessarily stringent so that only those refiners who are extremely burdened will qualify. In addition, EPA believes that because the program is so restrictive, the environmental impact of the adjustment will be minimal and will not negate the benefits of the anti-dumping program.

Commenters supported EPA's belief (as stated in the NPRM) that it is appropriate and feasible to base the low-sulfur crude baseline adjustment only on crude used for gasoline production. EPA is finalizing this criterion as proposed, with a correction to the regulations (contained in the proposal) which reflects the Agency's intent in both the proposal and today's final rule, as follows. In the proposed regulations, one aspect of the equation associated with this criterion was incorrectly defined, namely, the definition of the variable ''CSHI''. In the proposed regulations, ''CSHI'' was defined as the ''highest annual average crude slate per paragraph (e)(8)(ii)(B) of this section.'' Paragraph (e)(8)(ii)(B) of that section referenced the ''* * * highest crude sulfur level (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1994 * * *.'' Thus, the definition of ''CSHI'' in the proposed regulations was not consistent with the discussion contained in the proposal preamble (60 FR 40012. August 4, 1995) which referenced the years 1991–1994, as does today's regulation. Today's regulation corrects this error to reflect the Agency's intent in both the NPRM and today's final rulemaking preambles.

Criterion 7: *Gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.*

No comments were received on this proposed criterion. EPA is thus finalizing this requirement.

E. Comments on the Proposed Options for a Baseline Adjustment

EPA requested comments on the options proposed for determining the adjusted baseline sulfur level if a refiner meets the proposed criteria and is approved for a baseline adjustment. These options are summarized below. EPA also requested comments on its view that a refiner should not be exempt from its other anti-dumping compliance baselines, i.e., all other simple model requirements as well as exhaust benzene and exhaust toxics emissions under the complex model since those emissions are minimally affected by sulfur. See the support document for this rule for more discussion related to the various proposed options. (''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis'', Air Docket A–95–03.)

Option 1: EPA proposed that the adjusted baseline sulfur value be related to the ratio of the sulfur content of the highest sulfur crude utilized in 1994 to the average sulfur content of the crude slate utilized in 1990. Under this option, if a refiner used two crude oil supplies in its gasoline production in 1994 with sulfur levels of 1000 ppm and 2100 ppm, the higher sulfur crude would be used in the determination of the adjusted baseline sulfur value. If, for example, the 1990 average crude sulfur content was 500 ppm (resulting in a baseline sulfur value of approximately 20 ppm), the adjusted baseline sulfur value would be 84 ppm {20 ppm × (2100/500)}. EPA specifically requested comments on whether the highest sulfur crude from 1991–1994 should be used rather than just considering 1994.

Option 2: EPA proposed that the adjusted baseline sulfur value be related to the ratio of the highest average sulfur content of the crude slate used in 1991, 1992, 1993 or 1994 to the average sulfur content of the crude slate used in 1990. Incorporating the 1990 baseline and crude sulfur levels from Option 1, and average crude sulfur contents of 1000, 1100, 1400, and 1300 ppm for years 1991, 1992, 1993 and 1994, respectively, the adjusted baseline sulfur value would be 56 ppm, i.e., 20 ppm×(1400/500).

Option 3: EPA proposed that an adjusted baseline sulfur value be determined for each year through 1999. Beginning January 1, 2000, the adjusted baseline sulfur value would be the same as it was in 1999. EPA proposed that the annual adjusted value be determined over the four years prior to the year before the new value takes effect, except for 1995 and 1996 which would be determined as specified in Option 1 above (and for which the adjusted baseline sulfur value would be the same). EPA also proposed that if less than a 25 percent difference occurs between the 1990 average crude sulfur level and the average crude sulfur level over a four-year period, the refiner would receive no additional

adjustments, and its most recent adjusted baseline sulfur value would become its permanent baseline sulfur value at that point. For example, the standard for 1997 would be based on the ratio of the average sulfur content of the crude oil used in 1992, 1993, 1994 or 1995 to the average sulfur content of the crude slate used in 1990. EPA proposed that the resulting adjusted baseline sulfur value be submitted to the Agency for evaluation and approval by June 1 of the year preceding the year for which it would be the standard. In the example given, the adjusted baseline value (and all supporting information) would have to be submitted by June 1, 1996.

Option 4: For this option, EPA proposed requirements similar to those presented for Option 3 except that adjustments would only be allowed through 1997, i.e., the simple model years. Beginning in 1998, the adjusted baseline sulfur value would be equal to the value in 1997.

Option 5: EPA proposed that the adjusted baseline sulfur value be the unadjusted baseline sulfur value plus 50 ppm. EPA specifically solicited comments on the appropriateness of using 100 ppm or 150 ppm instead of 50 ppm.

In order to show that increasing gasoline sulfur is due solely to increasing crude sulfur, EPA also requested comments as to whether changes in refinery configuration or refinery operation should be prohibited.

Summary of Comments

Commenters suggested that if a one-time baseline adjustment is granted, refiners should be given the opportunity to estimate the compliance burden over a five to ten year period. According to commenters this concession would accommodate someone who meets the requirements in the short term, but who would require more substantial investment to implement a long term solution. Another commenter felt a one-time adjustment would only benefit the refiner if it were large enough to provide relief for the foreseeable future. Commenters indicated that the EPA proposals did not provide adequate time for adjustment. Furthermore, one commenter argued that proposing a one-time adjustment for a dynamic situation (changing crude oil sulfur) is illogical. The commenter explained that other adjustments allowed by the regulation, such as the work-in-progress, were for temporary events.

Of the options presented in the NPRM, most commenters who supported any adjustment felt that Option 1 was too restrictive and would offer little relief. They preferred Option 5 as the simplest and most flexible approach. One commenter stated that Options 1 and 2 were inappropriate since they include the assumption that crude sulfur and gasoline sulfur increase at a constant ratio, which is not correct. The commenter added that the sulfur content of gasoline depends on several factors such as the crude oil composition, refinery operation, and the type of gasoline produced. This commenter contended that Options 3 and 4 were also inappropriate, although Option 3 was preferable to Option 4 because of the additional time provided for obtaining a final adjustment. This commenter supported continuing relief, but did not support a limit beginning in 1997 or 1999. The commenter considered Option 5 to be the most appropriate option for making a sulfur adjustment, if the added amount was 150 ppm. This commenter also expressed concern regarding the low repeatability of tests for sulfur below 100 ppm. The commenter claimed that EPA appears to recognize the low repeatability by defining a negligible quantity limit of 30 ppm. Finally, this commenter proposed that EPA provide another opportunity for adjustment in five years, if crude sulfur levels continue to increase at faster rates than anticipated.

One commenter felt that if a refiner does not produce RFG, does not aggregate, has a limited crude supply, and meets the ''financial hurdles'', there is no need for arbitrary numbers, and such refiners should be given the statutory baseline of 338 ppm.

In addition to these concerns, other commenters opposed the continuation of the adjustment beyond the simple model time frame. They stated the complex model provides enough flexibility for refiners, and that EPA has neither the expertise to evaluate non-sulfur control options for complying with NO_X requirements nor the ability to shift from the simple model to the complex model for exhaust benzene. Commenters also stated that the simple model sulfur cap can be avoided by using the complex model. One commenter suggested that if EPA feels that more flexibility is needed, it could allow separate use of the simple and complex models for conventional fuel and RFG sulfur, olefins, and T90. This approach would provide industry-wide flexibility and would minimize the need to provide special relief to a limited number of refiners.

EPA also received a suggested option from a commenter who proposed that a refiner should be able to produce conventional gasoline which does not meet, on average, the requirements of its individual baseline if the refiner could show that deviation from its baseline was directly and solely attributable to crude sulfur change, and not due to alterations in refinery operation or choice of products. The suggested option also contained other requirements, which are essentially those finalized today by EPA, that are necessary for determining baseline adjustment eligibility.

Analysis and Conclusion

All five proposed options would determine the adjusted baseline sulfur value prior to the period of production, thus treating an affected refiner like all other refiners. Although today's rule provides some relief for refiners who are unduly burdened by baseline compliance, these refiners may have to modify refinery operations in the future to accommodate increasing crude sulfur levels. In the future, however, refinery modifications will likely be required of most refiners, without the benefit of a baseline adjustment.

After careful analysis of the proposed options, sulfur distribution data, and comments, EPA is finalizing essentially Option 5 in today's rule. Under this option, a refiner's one-time adjusted baseline sulfur value will be equal to the refiners unadjusted baseline sulfur value plus 100 ppm. EPA believes that a 100 ppm sulfur adjustment is appropriate for the following reasons. First, 50 ppm, as suggested in the NPRM, is too low. Upon further consideration, especially regarding the criteria which must be met in order to obtain this adjustment, EPA believes that a sulfur adjustment of 50 ppm would not provide sufficient relief. Refiners who are severely burdened by the anti-dumping regulations, and who meet the criteria, will likely need more than a 50 ppm baseline adjustment in order to reduce the extreme burden of the regulations. Second, a baseline adjustment value of 150 ppm sulfur is too high. Although this value was proposed in the NPRM, the Agency believes that an adjustment of this magnitude would negate the intentions of this regulation (which is to provide reasonable relief for extremely burdened refiners) and the goals of the anti-dumping program. If an adjustment of 150 ppm sulfur was permitted, several refiners not qualifying for the adjustment (due to the 50 ppm threshold required in Criterion 2) would have lower baseline sulfur values than some refiners who do qualify for the adjustment. Finally, EPA believes that a sulfur adjustment of 100 ppm will provide adequate relief for qualifying refiners while maintaining the

environmental benefits of the anti-dumping program.

Based on the above decision, 150 ppm is the maximum adjusted baseline sulfur value that a refiner could be granted under today's final rule (50 ppm threshold + 100 ppm additional sulfur = 150 ppm maximum adjusted baseline value for sulfur). The Agency believes that this option will provide refiners maximum flexibility with minimal anti-competitive effects.

Regarding the comment that EPA should provide another opportunity for adjustment in five years if crude sulfur levels continue to increase at faster rates than expected, EPA believes this action would be inappropriate. Baseline adjustments are intended to provide relief where the burden is extreme. EPA expects that the refining industry will develop means of dealing with increasing crude sulfur levels. The cost of such means may be high, but given the lead time, and the industry's knowledge of crude oil exploration and production, it is unlikely that a well-prepared refiner would be extremely burdened by future high sulfur levels.

As with other baseline adjustments, refiners receiving this baseline adjustment will retain the adjustment even after the Simple Model years, i.e., after 1997. Although the Complex Model does provide more compliance flexibility than the Simple Model, EPA, via the baseline adjustments, is providing relief for compliance with anti-dumping requirements as a whole, and not just the Simple or Complex Model requirements. In some cases, even the Complex Model does not provide enough flexibility such that an extreme burden (when evaluated under the Simple Model) is reduced. EPA also disagrees with commenters who suggested that EPA allow compliance to be determined under one model for conventional gasoline and under the other model for RFG. The reasons for requiring the use of the same models for both conventional and RFG were discussed at length in the December 1993 final rule. Additionally, as stated several times previously, EPA does not have authority and does not believe it is appropriate to provide a broad, i.e., industry-wide, adjustment program.

EPA considered the suggested option, but is not finalizing it due to some concerns about the concept and detail of the option. This option would exempt a qualifying refiner from complying with its anti-dumping compliance baseline if the refiner can show, at the end of the compliance period, that deviation from its baseline was directly and solely attributable to crude sulfur change. Thus, unlike all other refiners, a qualifying refiner would have no clearly defined standard prior to year of production. Furthermore, if EPA was not satisfied that deviation from its baseline was directly and solely attributable to crude sulfur change, the refiner would have to determine compliance relative to its unadjusted baseline and would likely be out of compliance.

VI. Low Sulfur, Low Olefin Baseline Adjustment

A. Introduction

Certain very clean individual baselines, i.e., those with extremely low values for one or more fuel parameters, can make compliance for refiners extremely difficult or impossible due to (1) limited maneuverability about the clean baseline and (2) limited flexibility with regard to annual averaging. During the review and approval of individual baselines, EPA was informed that extremely low baseline sulfur and olefin values could force a refiner to cease gasoline production. In addition, refiners with very clean baselines presumably produce the least polluting gasoline. It would be environmentally harmful if these refiners ceased production and their volumes were then produced by refiners with relatively dirtier baselines.

EPA believes it is appropriate to provide limited relief in the form of a baseline adjustment in those few cases where the regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental benefit.

B. General Comments on the Proposal

To provide some relief for those refiners who are severely burdened by the combination of extremely low sulfur and olefin levels, EPA proposed a baseline adjustment which set the annual average sulfur and olefin values to 30 ppm and 1.0 volume percent (vol%), respectively. To receive this adjustment, EPA proposed that a refiner must meet the following criteria:

(1) Have an individual baseline sulfur level less than or equal to 30 ppm and an individual olefin level less than or equal to 1.0 vol%;

(2) Show that installation of the refinery units necessary for compliance with an unadjusted baseline would cost $10 million or be at least 10 percent of the depreciated book value of the refinery as of January 1, 1995.

Additionally, EPA proposed that such an adjustment would be available to both single-refinery and multi-refinery refining companies. However, the affected refinery of a multi-refinery company would not be allowed to be aggregated with the company's other refineries for compliance purposes. If at any time a given refinery's baseline is aggregated with another refinery's baseline for compliance purposes, EPA proposed that the applicable individual baselines will revert to the unadjusted baselines.

EPA also proposed that the summer and winter individual baseline values for sulfur and olefins be set to 30 ppm and 1.0 vol%, respectively.

Summary and Analysis of Comments

Several commenters supported this proposed adjustment and EPA's statement that no environmental impacts would occur due to this rule. Additionally, many commenters cited problems with the accuracy of laboratory test methods at very low sulfur and olefin levels as further justification for this baseline adjustment. Commenters stated that errors in lab analysis, sample contamination, or product commingling can incorrectly result in fuel parameter values which are greater than the baseline values when those baseline values are extremely low. EPA agrees that this baseline adjustment will provide flexibility for qualifying refiners and will reduce the complications associated with testing low sulfur and olefin levels.

While the majority of commenters supported this proposal, many of them suggested changes in the criteria for the adjustment. One commenter suggested that EPA remove the aggregation requirement. This commenter stated that a conflict arises when a refiner also qualifies for a JP–4 baseline adjustment (under the JP–4 baseline adjustments, in certain instances, a qualifying multi-refinery refiner must determine its anti-dumping compliance on an aggregate basis). EPA agrees with this comment. EPA proposed the aggregation requirement because it believed that, as for certain other baseline adjustments, it would be inappropriate to provide a baseline adjustment and to also allow a refinery receiving such an adjustment to be included in an aggregate baseline for compliance purposes. Refiners who can comply with the reformulated and anti-dumping regulations on an aggregate basis (i.e., multi-refinery refiners) already have a degree of flexibility over single-refinery refiners, and EPA believed that allowing a refinery both a baseline adjustment and the ability to be included in an aggregate baseline might provide a competitive advantage to certain refiners. However, EPA did not intend that one baseline adjustment would eliminate use of another baseline

adjustment, and believes that this particular adjustment (because of the extremely low sulfur and olefin levels involved), when coupled with the ability to aggregate, would not create a significant competitive advantage. Thus, EPA is not finalizing the requirement that refiners who receive this low sulfur/low olefin adjustment must revert to the unadjusted baseline if that refinery is included in an aggregate baseline.

Several commenters suggested removing the economic criterion. Commenters stated that requiring large capital expenditures as a condition for this adjustment is unfair and devalues the investment in all such refineries. Commenters felt that refinery modifications would not guarantee compliance with an ultra-clean baseline. Commenters stated that even the allowed 125 percent of such ultra-low values could be less than the reproducibility and could approach the lower limit of the test method. Additionally, commenters said that subtle changes in the crude slate could affect compliance for these refiners.

EPA agrees that for extremely low sulfur or olefin values, it may be almost impossible to install additional equipment or take other actions to ensure compliance with 100 percent or even 125 percent of the baseline values. In such cases, the burden would most likely exceed $10 million or 10 percent of the depreciated refinery value as proposed in the NPRM. To require demonstration of this would be of little additional value. Thus, EPA is not finalizing that provision of this baseline adjustment.

EPA proposed two options for assigning seasonal adjusted sulfur and olefins values for summer and winter. The first option was to set these values to 30 ppm and 1.0 vol%, respectively, as for the annual average values. The other option was to use the refiner's own ratio of summer and winter values to determine the seasonal values. Few commenters indicated a preference for assigning seasonal baseline sulfur and olefin levels. EPA is thus promulgating its first option, that is, values of 30 ppm sulfur and 1.0 vol% olefins for both the annual average and seasonal values. EPA believes this choice is appropriate since, under this rule, baseline values for these two fuel parameters are different from the actual unadjusted baseline values of qualifying refiners. Additionally, based on comments mentioned earlier, testing of extremely low sulfur and low olefin values could have resulted in inaccurate unadjusted baseline values. Thus any ratio calculated from those values would also be inaccurate.

One commenter felt that refiners should be allowed to use the 30 ppm sulfur and 1.0 vol% olefin levels as threshold values which would also curtail testing of these trace parameters. This rule is only concerned with baseline development, for which all testing has been completed, and does not address compliance issues.

C. Provisions of the Final Rule

To obtain this baseline adjustment, a refinery must have a baseline sulfur value less than or equal to 30 ppm and a baseline olefin value less than or equal to 1.0 vol%. A refinery that meets this criteria will have an adjusted baseline sulfur value of 30 ppm and an adjusted baseline olefin value of 1.0 vol% as its summer, winter and annual average values. Although for most baseline adjustments refiners are required to petition EPA for the adjustment, in this case, since baselines are already established, it is more efficient for EPA to determine which refineries qualify for this baseline adjustment, rather than require such refineries to petition EPA. Thus, refiners with refineries that qualify for this adjustment will receive notification from EPA in a timely manner.

VII. Environmental and Economic Impacts

EPA expects a negligible environmental impact from allowing baseline adjustments under the criteria of this rule because (1) only a few refiners are expected to qualify for the adjustments (about 16), and (2) the total gasoline production of the qualifying refiners is small (less than three percent of annual gasoline production).

To quantitatively illustrate this negligible impact, EPA used the Complex Model (an emissions model that indicates changes in in-use motor vehicle emissions based on changes in one or more of the gasoline fuel parameters evaluated by the model) to determine the adjustments' effects on harmful exhaust toxics and NO_X emissions. Results from the model indicate less than a one percent increase in exhaust toxics emissions due to these three baseline adjustments (primarily due to the JP–4 adjustment), and less than a 0.1 percent increase in NO_X emissions (primarily due to the low sulfur crude and low sulfur/low olefins adjustments). The low sulfur crude and low sulfur/low olefins baseline adjustments have almost no impact on exhaust toxics emissions, and the JP–4 baseline adjustment will likely yield a decrease in annual NO_X emissions.

Refineries affected by this rule are geographically dispersed throughout the United States, mostly in ozone attainment areas.

The economic impacts of this rule are generally beneficial to affected refiners due to the additional flexibility provided by this action. Minimal anti-competitive effects are expected.

A more comprehensive description of the environmental and economic impacts of the RFG program is described in the Regulatory Impact Analysis (RIA) supporting the December 1993 rule. This RIA is available in Public Docket A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

VIII. Administrative Requirements

A. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this FRM is not a ''significant regulatory action.''

B. Impact on Small Entities

EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities, and that it is therefore not necessary to prepare a regulatory flexibility analysis in conjunction with this final rule. Because today's rule provides for less stringent requirements than the December 1993 regulations for qualifying refiners, small entities which qualify for one or more of the baseline adjustments contained herein will find

it easier to comply with the requirements of the RFG and anti-dumping programs.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the RFG program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IX. Statutory Authority

The statutory authority for the action promulgated today is granted to EPA by sections 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301 of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601).

2. Section 80.91 is amended by revising paragraph (e)(7)(i); removing paragraph (e)(7)(iv) and by adding paragraphs (e)(8) and (e)(9) to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(e) * * *

(7) * * *

(i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery produced JP–4 jet fuel in 1990 and all of the following requirements are also met:

(A) Refinery type.

(*1*) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per § 80.101(h)); or

(*2*) The refinery is one refinery of a multi-refinery refiner for which all of the refiner's refineries produced JP–4 in 1990; or

(*3*) The refinery is one refinery of a multi-refinery refiner for which not all of the refiner's refineries produced JP–4 in 1990.

(B) No refinery of a given refiner produces reformulated gasoline. If any refinery of the refiner produces reformulated gasoline at any time in a calendar year, the compliance baselines of all the refiner's refineries receiving a baseline adjustment per this paragraph (e)(7) shall revert to the unadjusted baselines of each respective refinery for that year and all subsequent years.

(C) 1990 JP–4 to gasoline ratio.

(*1*) For a refiner per paragraph (e)(7)(i)(A)(*1*) of this section, the ratio of its refinery's 1990 JP–4 production to its 1990 gasoline production must be greater than or equal to 0.15.

(*2*) For a refiner per paragraph (e)(7)(i)(A)(*2*) of this section, the ratio of each of its refinery's 1990 JP–4 production to its 1990 gasoline production must be greater than or equal to 0.15.

(*3*) For a refiner per paragraph (e)(7)(i)(A)(*3*) of this section, the ratio of the refiner's 1990 JP–4 production to its 1990 gasoline production must be greater than or equal to 0.15, when determined across all of its refineries. Such a refiner must comply with its anti-dumping requirements on an aggregate basis, per § 80.101(h), across all of its refineries.

* * * * *

(8) Baseline adjustments due to increasing crude sulfur content.

(i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery meets all of the following requirements:

(A) The refinery does not produce reformulated gasoline. If the refinery produces reformulated gasoline at any time in a calendar year, its compliance baseline shall revert to its unadjusted baseline for that year and all subsequent years;

(B) Has an unadjusted baseline sulfur value which is less than or equal to 50 parts per million (ppm);

(C) Is not aggregated with one or more other refineries (per § 80.101(h)). If a refinery which received an adjustment per this paragraph (e)(8) subsequently is included in an aggregate baseline, its compliance baseline shall revert to its unadjusted baseline for that year and all subsequent years;

(D) Can show that installation of the refinery units necessary to process higher sulfur crude oil supplies to comply with the refinery's unadjusted baseline would cost at least $10 million or be greater than or equal to 10 percent of the depreciated book value of the refinery as of January 1, 1995;

(E) Can show that it could not reasonably or economically obtain crude oil from an alternative source that would permit it to produce conventional gasoline which would comply with its unadjusted baseline;

(F) Has experienced an increase of greater than or equal to 25 percent in the average sulfur content of the crude oil used in the production of gasoline in the refinery since 1990, calculated as follows:

$$\frac{(CSHI - CS90)}{CS90} \times 100 = CS\%CHG$$

Where:

CSHI=highest annual average crude sulfur (in ppm), of the crude slates used in the production of gasoline, determined over the years 1991–1994;

CS90=1990 annual average crude slate sulfur (in ppm), of the crude slates used in the production of gasoline;

CS%CHG=percent change in average sulfur content of crude slate;

(G) Can show that gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.

(ii) The adjusted baseline sulfur value shall be the actual baseline sulfur value, in ppm, plus 100 ppm.

(iii) All adjustments made pursuant to this paragraph (e)(8) must be accompanied by:

(A) Unadjusted and adjusted fuel parameters and emissions; and

(B) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(9) Baseline adjustment for low sulfur and olefins.

(i) Baseline adjustments may be allowed if a refinery meets all of the following requirements:

(A) The unadjusted annual average baseline sulfur value of the refinery is less than or equal to 30 parts per million (ppm);

(B) The unadjusted annual average baseline olefin value of the refinery is less than or equal to 1.0 percent by volume (vol%).

(ii) Adjusted baseline values.

(A) The adjusted baseline shall have an annual average sulfur value of 30 ppm, and an annual average olefin value of 1.0 vol%.

(B) The adjusted baseline shall have a summer sulfur value of 30 ppm, and a summer olefin value of 1.0 vol%.

(C) The adjusted baseline shall have a winter sulfur value of 30 ppm, and a winter olefin value of 1.0 vol%.

* * * * *

§ 80.10 [Amended]

3. Section 80.101 is amended by removing paragraph (b)(1)(v).

[FR Doc. 97–5197 Filed 3–3–97; 8:45 am]

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Federal Register

Tuesday
March 4, 1997

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal years 1997–1998 for research and demonstration projects, rehabilitation research and training centers, and a knowledge dissemination and utilization project.

SUMMARY: The Secretary proposes priorities for the Research and Demonstration Project (R&D) Program, the Rehabilitation Research and Training Center (RRTC) Program, and the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1997–1998. The Secretary takes this action to focus research attention on areas of national need to improve rehabilitation services and outcomes for individuals with disabilities, and to assist in the solutions to problems encountered by individuals with disabilities in their daily activities.

DATES: Comments must be received on or before April 3, 1997.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601. Internet: NPP—ADA@ed.gov

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133. Internet: David—Esquith@ed.gov

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities to establish R&D projects for model systems for burn injury and traumatic brain injury, RRTCs for research related to aging with a spinal cord injury and severe problem behaviors, and a D&U project to improve the utilization of existing and emerging rehabilitation technology in the State vocational rehabilitation program.

These proposed priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priorities in a notice in the Federal Register. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the Federal Register concurrent with or following publication of the notice of the final priorities.

Research and Demonstration Projects

Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public agencies and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed to assist in the development of solutions to the problems encountered by individuals with disabilities in their daily activities, especially problems related to employment (see 34 CFR 351.1). Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support the research activities listed in 34 CFR 351.10.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this program only applications that meet one of these absolute priorities:

Proposed Priority 1: Burn Injury Rehabilitation Model System

Background

Each year more than 2.0 million persons (about one percent of the population of the United States) receive a burn injury. Of these, 6,500 to 12,000 do not survive; 500,000 require medical care and result in temporary disability with respect to home, school, or work activities; and 70,000 to 100,000 are severe enough to be admitted to a hospital (Rice, D.P. and MacKenzie, E.J., ''Cost of Injury in the United States: A Report to Congress,'' Atlanta, GA: Centers for Disease Control, 1989).

In 1994, NIDRR provided funding to establish Burn Injury Rehabilitation Model Systems of Care. These R&D projects focused primarily on developing and demonstrating a comprehensive, multidisciplinary model system of rehabilitative services for individuals with severe burns, and evaluating the efficacy of that system through the collection and analysis of uniform data on system benefits, costs, and outcomes. NIDRR's multi-center model systems program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care including emergency care, acute care management, comprehensive in-patient rehabilitation, and long-term interdisciplinary follow-up services.

Burn rehabilitation requires interventions as soon as possible after admission to hospitals and has treatment implications for several years following hospital discharge. Burn trauma often causes injuries and impairments in addition to the burn, and many individuals with burn injuries have secondary complications related to the burn condition. These may include open wounds, contractures, neuropathies, cosmetic abnormalities, deconditioning, bony deformities, hypersensitivity to heat and cold, amputation, psychosocial distress, chronic pain, and scarring. The complicated nature of burn injuries, the difficulty of treatment, and the risk of infection with possible loss of function requires interventions quickly and frequently to attempt to maintain a functional lifestyle and return to living independently. Minimization of physical deterioration and prevention of further impairment and functional limitation is critical and research is needed to find the appropriate procedures for clinical applications. Research is needed to develop and refine methods to determine the effectiveness of interventions to prevent, manage, and reduce medical complications that contribute to short- and long-term disability in burn patients.

Improved measures are needed of an individual's functional ability as a result of burn rehabilitation interventions. Functional assessment brings objectivity to rehabilitation by establishing appropriate, uniform descriptors of rehabilitation care and changes in individual capacity to perform activities of daily living or other measurable elements of an individual's major life activities (Granger, C. and Brownscheidle, C., ''Outcome Measurement in Medical Rehabilitation,'' *International Journal of*

Technology Assessment in Health Care, 11:2, 1995). Increasingly, health and rehabilitation services require effectiveness and impact measures to evaluate their services as a part of procedures for cost-reimbursement and billing for services. With greater emphasis on individual choice in services delivery, consumers and advocates are likewise advocates for functional assessment measures as encoders of service effectiveness. Few existing functional assessment measures, however, address the specialized and complex combination of psychosocial and medical challenges encountered by an individual who has experienced severe burn injury (Rucker, K., et al., ''Analysis of Functional Assessment Instruments for Disability Rehabilitation Programs,'' SSA Contract No. 600–95–2194, Virginia Commonwealth University, 1996).

Burn injuries can produce emotional problems, such as post-traumatic stress disorders, anxiety, and depression. These problems may result from a variety of causes (e.g., reaction to cosmetic alterations, changes in functional abilities, changes in work status, restrictions on recreational activities) (Cromes, G.F. and Helm, P.A., ''Burn Injuries,'' in *Medical Aspects of Disability,* pgs. 92–104, 1993). The aesthetic disability of disfigurement is frequently more severe than the physical disability and may result in profound social consequences for those afflicted (Hurren, J.S., ''Rehabilitation of the Burned Patient: James Laing Memorial Essay for 1993,'' *Burns,* Vol. 21, No. 2, 1995). The more severe the burn, the greater the likelihood of long-term psychosocial adjustment issues related to both physical and psychosocial problems, that affect quality of life. Although psychosocial adjustment is a critical factor in the long-term recovery of burn injury patients, there continues to be limited emphasis on research in the area of psychosocial rehabilitation and its relationship to quality of life. Family and friends play an important role and provide major support in the psychological recovery of burn patients. Research in this area needs to address the role of the family and personal advocacy systems in providing support during the burn injury rehabilitation process.

Difficulty with long-term follow-up of all patients after hospital discharge has always been a problem, but it is even more difficult when the individual lives far from the specialized rehabilitation unit. Problems are also encountered with those individuals living in rural areas, where access to burn injury rehabilitation, including mental health services, may be quite limited due to lack of proximity to specialized practitioners, limited access to technological advances, and hospital closures.

Return-to-work and educational pursuits are important measures of rehabilitation success. Work is an important source of satisfaction, self-respect, and dignity, as well as an arena for socialization for individuals who have experienced burn injury (Salisbury, R., ''Burn Rehabilitation: Our Unanswered Challenge,'' 1992 Presidential Address to the American Burn Association, April, 1992). However, the efficacy of vocational rehabilitation interventions for this population has not been documented adequately. The physical, psychosocial, and emotional factors that lead to successful employment have not been clearly identified. Research is needed to examine relationships between vocational interventions and supports, employment, functional capacity, and degree of burn injury, including secondary complications.

Proposed Priority 1

The Secretary proposes to establish Burn Injury Rehabilitation Model Systems R&D projects for the purpose of demonstrating a comprehensive, multidisciplinary model system of rehabilitative services for individuals with severe burns. An R&D project must:

(1) Identify and evaluate techniques to prevent secondary complications;

(2) develop and evaluate outreach programs to improve follow-up services for rural populations;

(3) develop and evaluate measures of functional outcome for burn rehabilitation; and

(4) identify and evaluate interventions, including vocational rehabilitation interventions, to improve psychosocial adjustment, quality of life, community integration, and employment-related outcomes.

In carrying out these purposes, the R&D project must:

- Participate in clinical and systems analysis studies of the burn injury rehabilitation model system by collecting and contributing data on patient characteristics, diagnoses, causes of injury, interventions, outcomes, and costs to a uniform, standardized national data base as prescribed by the Secretary; and
- Consider collaborative projects with other model systems.

Proposed Priority 2: Traumatic Brain Injury Model Systems

Background

An estimated 1.9 million Americans experience traumatic brain injury (TBI) each year (Collins, J.F., ''Types of Injuries by Selected Characteristics: US 1985–87,'' National Center for Health Statistics, Vital Health Stat 10 (175), 1990). Incidence is highest among youth and younger adults. Young males have the highest incidence rates of any group (''Disability Statistics Abstract,'' No. 14, Disability Statistics Rehabilitation Research & Training Center, University of California, San Francisco, November, 1995). Each year approximately 70,000 to 90,000 TBI survivors enter a life of continuing, debilitating loss of function; an estimated 5,000 survivors experience seizure disorders; and 2,000 enter into a persistent vegetative state. The number of people surviving head injuries has increased significantly over the last 25 years as a result of faster and better emergency treatment, more rapid and safer transport to specialized treatment facilities, and advances in medical treatment (National Foundation for Brain Research, Washington, DC, 1994).

In 1987, NIDRR provided funding to establish TBI Model Systems of Care. These R&D projects focused primarily on developing and demonstrating a comprehensive, multidisciplinary model system of rehabilitative services for individuals with TBI, and evaluating the efficacy of that system through the collection and analysis of uniform data on system benefits, costs, and outcomes. NIDRR's multi-center model systems program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care including emergency care, acute neuro-trauma management, comprehensive in-patient rehabilitation, and long-term interdisciplinary follow-up services.

The TBI Model Systems serve a substantial number of patients, allowing the projects to conduct clinical research and program evaluation, which maximize the potential for project replication. In addition, the TBI Model Systems have the advantage of a complex data collection and retrieval program with the capability to analyze the different system components and provide information on project cost effectiveness and benefits. Information is collected throughout the rehabilitation process, permitting long-term follow-up on the course of injury, outcomes, and changes in employment status, community integration, substance abuse and family needs. The TBI Model Systems projects serve as

regional and national models for program development and as information centers for consumers, families, and professionals.

The TBI Model Systems National Database reports that the average length of stay in acute care has decreased approximately 50 percent, from 30 days in 1989 to 15 days in 1996; and the average length of stay in in-patient rehabilitation has decreased 38 percent, from 52 days in 1989 to 32 days in 1996. With the changing patterns of service delivery, there continues to be a need to establish and evaluate new rehabilitation interventions and strategies. Specialized measurement tools have been developed by the TBI Model Systems to assess progress and describe clinical and functional outcomes. Refinement of these measurement tools is necessary to demonstrate the effectiveness of rehabilitation interventions in in-patient and outpatient settings. After the individual is discharged from an in-patient setting, there is an ongoing need for outpatient and community reintegration services in order to continue therapeutic interventions and the educational and referral process. As the average length of stay in in-patient settings decreases, there is a greater need to evaluate outpatient and community reintegration programs.

Findings from a multi-center investigation of employment and community integration following TBI highlight the need for post-acute rehabilitation programs with particular emphasis on vocational rehabilitation (Sander, A., et al., *Journal of Head Trauma Rehabilitation*, Vol. 11, No. 5, pgs. 70–84, 1996). Kreutzer states that employment and productivity, relating to others in the community, and independently caring for oneself at home are important quality-of-life components (''TBI: Models and Systems of Care,'' Conference Syllabus, Medical College of Virginia, April, 1996). As functional recovery progresses during the first year or more after the injury, the focus of rehabilitation shifts from medical intervention and physical restoration to psychosocial and vocational adaptation. The ultimate goal of psychosocial and vocational rehabilitation is community reintegration and employment. It is important to emphasize that services aimed at community reintegration must consider not only attributes and limitations of the injured individuals, but also the social, educational, and vocational systems in which the individual will function. In addition, rates of competitive employment decrease substantially from pre-injury levels. Head injury frequently results in unemployment, and there are significant relationships between risk factors (e.g., substance abuse) and this changed employment status. However, there is no reliable information regarding the magnitude of risk associated with different factors, or with different levels of these factors (Dikmen, S., et al., ''Employment following Traumatic Head Injuries,'' *Archives of Neurology*, Vol. 51, February, 1994).

A major disability like TBI has a profoundly disorganizing impact on the lives of individuals with TBI and their families. Questions involving community, family, and vocational restoration, as well as generic concerns about future happiness and fulfillment, are common (Banja, J., & Johnston, M., ''Ethical Perspectives and Social Policy,'' *Archives of Physical Medicine Rehabilitation*, Vol. 75, SC–19, December, 1994). Even individuals who have integrated well into society experience adverse psychosocial effects. Employment instability, isolation from friends, and increased need for support are a few of the problems encountered by individuals with TBI. Families often function as the primary support system for individuals with TBI after they are discharged. There is a clear need for research to develop family treatment strategies and explore their effect on outcomes for individuals with TBI.

The health care costs associated with TBI are staggering. The direct medical costs of TBI treatment have been estimated at more than $4 billion annually (Max, W., et al., ''Head Injuries: Costs and Consequences,'' *Journal of Head Trauma Rehabilitation*, Vol. 6, pgs. 76–91, 1991). In view of current scrutiny of all health care spending, which may result in pressures to constrict or deny rehabilitation care to individuals with traumatic brain injury, it is important to gather information on the efficacy and cost-effectiveness of various treatment interventions and service delivery models. Credible outcome monitoring systems are needed to establish guidelines by which fair compromises can be reached (Johnston, M. & Hall, K., ''Outcomes Evaluation in TBI Rehabilitation, Part I: Overview and System Principles,'' *Archives of Physical Medicine and Rehabilitation*, Vol. 75, December, 1994). A greater emphasis on outcomes measurements and management will foster the gathering of information on efficacy and cost-effectiveness.

Violence-induced TBI is increasingly common, and has significant implications for rehabilitation and community reintegration. According to the 1991 National Health Interview Survey data, violence was responsible for nine percent of all non-fatal TBIs. In addition, violence was a cause of injury in 30 percent of the 684 external injury cases in the TBI Model Systems database (a higher frequency due, in part, to the urban setting of one of the TBI Model Systems). The frequency of violence as a cause of TBI, in part, can be attributed to the fact that the individuals most likely to sustain TBI (i.e., males under age 18) are also those most likely to be involved in crimes and violence. The increase in violence as a cause of brain injury may have consequences with regard to rehabilitation costs, treatment interventions and long-term outcomes. For example, individuals with violence-related injuries show more difficulties with community integration skills one year following injury, which evidences itself in areas of social integration and productivity. Further research is needed to examine whether individuals who sustain a TBI as a result of violence require specialized rehabilitation interventions.

Proposed Priority 2

The Secretary proposes to establish Model Systems TBI R&D projects for the purpose of demonstrating a comprehensive, multidisciplinary model system of care for individuals with TBI. An R&D project must:

(1) Investigate efficacy of alternative methods of service delivery interventions after in-patient rehabilitation discharge;

(2) Identify and evaluate interventions that can improve vocational outcomes and community integration;

(3) Develop key predictors of rehabilitation outcome at hospital discharge and at long-term follow-up;

(4) Determine relationships between cost of care and functional outcomes; and

(5) Examine the implications of violence as a cause of TBI on treatment interventions, rehabilitation costs, and long-term outcomes.

In carrying out these purposes, the R&D Systems project must:

- Participate in clinical and systems analysis studies of the traumatic brain injury model system by collecting and contributing data on patient characteristics, diagnoses, causes of injury, interventions, outcomes, and costs to a uniform, standardized national data base as prescribed by the Secretary;
- Consider collaborative projects with other model systems; and

• Coordinate research efforts with other NIDRR grantees that address TBI-related issues.

Rehabilitation Research and Training Centers (RRTCs)

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of l973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The Secretary proposes that the following requirements will apply to these RRTCs pursuant to the priorities unless noted otherwise:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 3: Effective Interventions for Children and Youth With Disabilities Who Exhibit Severe Problem Behaviors

Background

In recent years researchers have focused on the application of non-aversive approaches to reduce and eliminate severe problem behaviors (SPBs) exhibited by children and youth with disabilities. This has been the case because of ethical concerns about aversive interventions expressed by disability professionals, parents, and advocates, as well as research findings which indicate that aversive interventions are largely ineffective in eliminating or reducing SPBs over an extended period of time. Because of their disruptive nature, SPBs such as physical aggression, self-injury, violence, and property destruction are among the primary obstacles to full inclusion of children and youth with disabilities in age-appropriate community-based activities and regular education settings. School and community-based program personnel need effective methods to reduce and eliminate SPBs in order to provide these children and youth with disabilities with opportunities to learn, play, and work with their non-disabled peers.

Previous research in this area has improved our understanding of the early indicators of SPBs. For example, children with disabilities who display minor self-injurious behavior during the preschool years are strong candidates to exhibit more SPBs within two years (Hall, S., ‘‘Early Intervention of Self-

injurious Behavior in Young Children with Intellectual Disabilities: Naturalistic Observation,'' Presented at the Annual Meeting of the American Association of Mental Retardation, San Francisco, June, 1995). Further research is needed on how severe problem behavior patterns develop and whether early intervention efforts can reduce, and perhaps prevent, SPBs.

Preliminary research has also indicated that problem behaviors can be reduced by understanding the antecedents to and function of the behavior. Accordingly, children and youth with disabilities who exhibit SPBs may be able to learn to self-manage their problem behaviors.

While there are encouraging indications that non-aversive approaches can be effective in reducing and eliminating SPBs, there is a need to develop effective interventions that can be maintained over extended periods of time. Treatments of self-injurious behaviors are particularly problematic in regard to long-term effectiveness. Research has shown that children who exhibit self-injurious behaviors, even after intensive non-aversive treatment programs, may revert to self-injury at high rates within a few months of intervention (Durand, V.M., et al., ''The Course of Self-injurious Behavior Among People with Autism,'' Paper presented at the Annual Meeting of the Berkshire Association for Behavior Analysis and Therapy, Amherst, MA. 1995).

Information from functional assessments can be used to develop educational plans and address inappropriate behavior. Functional assessment is the general label assigned to describe a set of processes (e.g., interviews, rating, rating scales, direct observations, and systematic experimental analyses of specific situations) for defining the events in an environment that reliably predict and maintain behaviors. More research needs to be been done in order to expand the application of functional assessments with children and youth with disabilities who exhibit severe behavior problems.

Under normal circumstances, children and youth with disabilities who exhibit SPBs in school and the community are also exhibiting these behaviors at home. In order for non-aversive approaches to be implemented consistently across environments, parents and other caregivers must not only consent to the approach, but also be capable of implementing the approach effectively in the home environment. The non-aversive strategies that are developed must be compatible with the home environment, and take into account providing parents and guardians with the skills they need to implement the program effectively.

Proposed Priority 3

The Secretary proposes to establish an RRTC for the purpose of providing school and community-based program personnel with effective methods to reduce and eliminate SPBs in children and youth with disabilities. The RRTC shall:

(1) Develop and evaluate non-aversive interventions that reduce and eliminate severe behavior problems exhibited by children and youth with disabilities;

(2) Investigate the etiology of SPBs for the purpose of developing prevention and early intervention strategies;

(3) Investigate the durability and maintenance of effective non-aversive interventions;

(4) Investigate the effectiveness of self-management strategies;

(5) Develop and evaluate functional assessments to address SPBs in educational and community-based settings;

(6) Develop materials and provide training to educators, community-based program personnel, parents, and caregivers who address SPBs; and

(7) Develop and disseminate informational materials and provide technical assistance to local and State educational agencies to address SPBs.

In carrying out the purposes of the priority, the RRTC shall disseminate materials and coordinate training activities with related projects supported by the Office of Special Education Programs, including the Regional Resource Centers and Parent Information Centers.

Proposed Priority 4: Aging With Spinal Cord Injury

Background

Persons who experience a spinal cord injury (SCI) and related conditions are surviving in significant numbers to late middle age and beyond. Less than fifty years ago the average life expectancy for a spinal cord injured individual in the United States was approximately three years post-injury; today life expectancy approaches that of the general population (Enders, A., ''Issues and Options in Technology for Disability and Aging,'' National Conference on Disability and Aging, Institute for Health and Aging, San Francisco, 1986). Estimates of spinal cord injury prevalence in America range from 180,000 to 250,000 with between 7,000 and 10,000 new spinal cord injuries each year (National Spinal Cord Injury Statistical Center, The University of Alabama at Birmingham, 1995). One of four individuals who previously sustained a spinal cord injury is now at least 20 years post-onset. The average age of a SCI survivor is now about 48 years and about 20 percent of SCI survivors are over age 60.

Many SCI survivors develop new medical, functional, and psychological problems that threaten their independence. In addition, many experience job loss, barriers to accessing proper health maintenance and caregiver/personal assistance services, loss of financial assistance, and economic hardship. Persons aging with SCI are susceptible to multiple health maintenance problems including cardiovascular, urinary tract infections, pressure sores, hypertension, fractures, blood in the urine or bowel problems, diabetes, respiratory and neurological problems (Whiteneck, G. (Ed.), *Aging with a Spinal Cord Injury,* 1992). The leading medical cause of death and further disability that affects people with SCI is now premature cardiovascular disease of the atherosclerotic kind. Whiteneck, using data from England, found that cardiovascular disease is now tied with genito-urinary problems as the leading cause of death in people aging with SCI.

Individuals aging with a SCI also experience complications as a result of osteoporosis and lower extremity fractures (Garland, D.E., ''Bone Mineral Density about the Knee in SCI Patients with Pathological Fractures,'' *Contemporary Orthopaedics,* 1992 and Garland, D.E., ''Osteoporosis Following SCI,'' *Journal of Orthopaedic Research,* 1992). Garland discovered a high prevalence of carpal tunnel syndrome, which increased with the length of time after injury. In addition, Sie found an increased prevalence of general upper extremity pain and shoulder pain with time since injury in both paraplegic and tetraplegia individuals (Sie, I., ''Upper Extremity Pain in the Post-Rehabilitation SCI Injured Patient,'' *Archives of Physical Medicine and Rehabilitation,* 1992). Shoulder pain occurs in about 50 percent of people with paraplegia secondary to prolonged wheelchair use. Pain, fatigue and weakness are also commonly reported but accommodations for them are poorly understood.

Further research is needed to determine the changes in functional ability to perform activities of daily living (ADL) and work. Research related to work performance and employment status indicates that ten years after the SCI, the employment rate peaks at about 40 percent for persons with paraplegia

and at 28 percent for persons with quadriplegia, and sharply declines about 18 years after the post-injury (SCI Model Systems Annual Report, 1992). Interventions are needed to maintain the employment status of people aging with SCI and prevent job loss due to premature aging effects.

As people age and their functioning changes, the need for assistance from others (i.e., family, friends, and paid caregivers) increases. Strategies to best assist the caregiver, in turn, to help the person who is aging with SCI need to be developed. Moreover, there is no ''typical'' caregiver, some are spouses, some are parents, and some are children. Fifty percent of people with SCI receive help exclusively from their families, and an additional 19 percent receive substantial help from their families. Living with family is the most frequently reported living situation, occurring in over 90 percent of cases (Nosek, M.A., ''Personal Assistance: Key to Maintaining Ability of Persons with Physical Disabilities,'' *Applied Rehabilitation Counselor,* Vol. 21, 1990).

Declining or unstable support systems for people aging with SCI are also a major concern. Since parents of aging SCI individuals are often elderly, they are also at risk of poor health or death. Spousal support providers may experience ''burn-out'' and stress, or develop health problems. There are few alternatives to the informal support system. As individuals with SCI age, access to proper health care, especially with the growing trend toward managed care, is becoming a bigger problem. There is need for research on maintaining independence in the community for people aging with SCI through both the informal and formal systems of care.

Psychological well-being for individuals aging with SCI is also of major concern. Depression is a very important issue requiring additional study because of its bearing on quality of life, its importance for overall health, and its relationship to suicide (Schulz, R., ''Long Term Adjustment to Physical Disability: The Role of Social Support Service of Control and Self Blame,'' *Journal of Personality and Social Psychology,* 5, pgs. 1162–1172, 1985). The research indicates that over 40 percent of people who have sustained functional changes as a consequence of aging with SCI show high levels of distress and depression. Pilot data on treatment are available from the NIDRR-funded centers, but a full treatment procedure for stress and depression needs to be developed.

Proposed Priority 4

The Secretary proposes to establish an RRTC for the purpose of conducting research on rehabilitation techniques that assist individuals aging with SCI to maintain employment and independence in the community. The RRTC shall:

(1) Identify, develop, and evaluate interventions that maintain employment for individuals aging with SCI;

(2) Identify, develop, and evaluate rehabilitation techniques that will assist individuals aging with SCI to cope with changes in functional abilities, changes in ADL, and the impact of these techniques on quality of life;

(3) Investigate how formal and informal systems of care could be improved to address the impact of problems associated with long-term care givers and personal service assistants;

(4) Develop a program of information dissemination and training for individuals aging with SCI and those who provide services to them;

(5) Develop regimens to minimize or take account of the impacts of aging with SCI and develop materials that support these regimens for individuals with SCI, their families, service providers and educators; and

(6) Develop materials for individuals with SCI, their families, service providers and educators that will provide a better understanding of the natural course of SCI as persons age.

In carrying out the purposes of the priority, the RRTC shall coordinate with all other relevant SCI research and demonstration activities, including those sponsored by the National Center on Medical Rehabilitation Research, RSA, Paralyzed Veterans of America, National Spinal Cord Injury Association and NIDRR-funded SCI projects.

Knowledge Dissemination and Utilization Projects

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations. Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Priority 5: Improving the Utilization of Existing and Emerging Rehabilitation Technology in the State Vocational Rehabilitation Program

Background

One of the more persistent issues in the rehabilitation of individuals with disabilities has been maximizing the use of existing and emerging rehabilitation technology in the service settings of the State Vocational Rehabilitation (VR) programs.

As defined in Section 7(13) of the Rehabilitation Act, as amended (Act), rehabilitation technology means ''the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living and recreation'' and includes ''rehabilitation engineering, assistive technology devices, and assistive technology services.'' Under Section 101(a)(5)(C) of the Act, designated VR agencies must describe in their State plan how the State will provide a broad range of rehabilitation technology services at each stage of the rehabilitation process. As appropriate, rehabilitation technology services are provided to individuals with disabilities served by State VR programs under an Individualized Written Rehabilitation Program.

Rehabilitation technology, and information about rehabilitation technology, is generated by a variety of sources including, but not limited to, NIDRR-funded Rehabilitation Engineering and Research Centers, the Assistive Technology program funded under the Technology-Related Assistance for Individuals with Disabilities Act of 1988, ABLEDATA, the Department of Veterans Affairs Research and Development projects, and manufacturers in the private sector. While many of these sources may undertake dissemination activities, too often rehabilitation counselors and related vocational rehabilitation service providers are unaware of existing or emerging rehabilitation technologies, resulting in a number of problems for clients of the State vocational rehabilitation system.

The provision of inappropriate rehabilitation technology can result in nonuse. The nonuse of a device may lead to decreases in functional abilities, freedom, and independence. On a

service delivery level, device abandonment represents ineffective use of limited funds by Federal, State, and local government agencies, insurers, and other provider organizations (Phillips, B. and Hongxin, Z., ''Predictors of Assistive Technology Abandonment,'' *Assistive Technology*, Vol. 5, No. 1, pg. 36, 1993).

If vocational rehabilitation personnel are unfamiliar with an emerging technology, their clients are disadvantaged by not having access to recent developments in the field. These developments may be more effective and economical than existing rehabilitation technology. Because of the costs that can be involved, the decision to utilize a particular rehabilitation technology, even if the technology is outdated, can be difficult to reverse or modify.

Information barriers related to rehabilitation technology also apply to secondary students with disabilities who increasingly complete their education with the help of assistive devices (Everson, J., ''Using Person-centered Planning Concepts to Enhance School-to-Adult Life Transition Planning,'' *Journal of Vocational Rehabilitation*, Vol. 6, 1996). In order to ensure their continued access to technical accommodation as part of their transition to employment and independent living, special education and vocational rehabilitation personnel involved in their transition must have proper training and access to current information.

Assigning inappropriate or outdated rehabilitation technology to consumers can be avoided if vocational rehabilitation personnel are provided with comprehensive and current information on existing and emerging rehabilitation technology. Rehabilitation counselors and related vocational rehabilitation service providers gain access to information about rehabilitation technology from various sources including, but not limited to, their pre-service and in-service training, memberships in professional organizations, conferences, and more recently through the information superhighway. Because the field of rehabilitation technology is developing rapidly, and because it is a technically diverse and complex field, it has been a challenge for rehabilitation personnel development programs to keep pace with rehabilitation technology. There is a growing need for dissemination of information about rehabilitation technology, including the development of pre-service and in-service resources, in order to promote improved rehabilitation professional training on rehabilitation technology.

Proposed Priority 5

The Secretary proposes to establish a knowledge dissemination and utilization project for the purpose of improving the ability of rehabilitation professionals to more effectively use rehabilitation technology in providing services to individuals through the State VR Services program. The proposed D&U project must:

(1) evaluate the pre-service and in-service rehabilitation professional training materials that address rehabilitation technology and identify strengths and deficiencies in those materials;

(2) Based on this evaluation, develop training materials that will improve the ability of rehabilitation counselors and related professionals to utilize existing and emerging rehabilitation technology;

(3) Disseminate these materials to pre-service and in-service rehabilitation professional training programs;

(4) As needed, provide technical assistance to these pre-service and in-service training programs to maximize the use of the materials; and

(5) Using a variety of strategies, disseminate information about existing and emerging rehabilitation technology to rehabilitation counselors, special educators involved with the transition of secondary students, and related rehabilitation professionals.

In carrying out the purposes of the priority, the proposed D&U project must:

- Coordinate with the Assistive Technology projects to avoid duplication of effort;
- Develop information about existing and emerging rehabilitation technology from a wide variety of sources; and
- On a regular basis, update the information and materials that are developed.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3423, Mary Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays. APPLICABLE PROGRAM REGULATIONS: 34 CFR Parts 350, 351, and 352.

Program Authority: 29 U.S.C. 760–762.

Dated: February 27, 1997.

(Catalog of Federal Domestic Assistance Numbers: 84.133A, Research and Demonstration Projects, 84.133B, Rehabilitation Research and Training Center Program, 84.133D, Knowledge Dissemination and Utilization Program)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–5241 Filed 3–3–97; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday
March 4, 1997

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: April 3, 1997.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the Federal Register on Friday, June 21, 1996, 61 FR 32036–32560.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 61 FR 32032, also on June 21, 1996. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. The Hotel and Motel Fire Safety Act of 1990 National Master List is now accessible electronically. The National Master List Web Site is located at: http://www.usfa/fema.gov/hotel/index.htm

Visitors to this web site will be able to search, view, download and print all or part of the National Master List by State, city, or hotel chain. The site also provides visitors with other information related to the Hotel and Motel Fire Safety Act. Instructions on gaining access to this information are available as the visitor enters the site.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices. Each update contains or may contain three categories: ''Additions;'' ''Corrections/changes;'' and ''Deletions.'' For the purposes of the updates, the three categories mean and include the following:

''Additions'' are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

''Corrections/changes'' are corrections to property names, addressee or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

''Deletions'' are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

Dated: February 25, 1997.

David L. de Courcy,

Acting General Counsel.

The update to the national master list for the month of February 1997 follows:

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST FEBRUARY 19, 1997 UPDATE

Index property name	PO Box/Rt. No. street address	City, State/zip	Phone
ADDITIONS			
AK:			
AK0052 BEST WESTERN HOTEL SEWARD.	PO BOX 670, 221 5TH AVE	SEWARD, AK 99664	(907)224–2378
AL:			
AL0258 LA QUINTA INN & SUITES	120 RIVERCHASE PKWY	BIRMINGHAM, AL 35244	(205)403–0096
AL0260 STUDIO PLUS AT CAHABA PARK.	101 CAHABA PARK CIRCLE	BIRMINGHAM, AL 35242	(334)273–0075
AL0262 STUDIO PLUS AT WILDWOOD	40 STATE FARM PKWY	BIRMINGHAM, AL 35209	(205)290–0102
AL0257 JAMESON INN	2120 JAMESON PLACE S.W	DECATUR, AL 35602	(205)355–2229
AL0259 LA QUINTA INN & SUITES	60 STATE FARM PRKWY	HOMEWOOD, AL 35209	(205)290–0850
AL0261 STUDIO PLUS AT MONTGOMERY.	5115 CARMICHAEL RD	MONTGOMERY, AL 361063341	(334)273–0075
AZ:			
AZ0267 LA QUINTA INN & SUITES	8888 EAST SHEA BLVD	SCOTTSDALE, AZ 85260	(602)614–5300
AZ0268 BEST WESTERN PAINT PONY LODGE.	581 W. DEUCE OF CLUBS	SHOW LOW, AZ 859014804	(520)537–5773
AZ0265 BEST WESTERN MISSION INN	3460 E. FRY BLVD.	SIERRA VISTA, AZ 85635	(520)458–8500
AZ0266 LA QUINTA INN & SUITES	7001 SOUTH TUCSON	TUCSON, AZ 85706	(520)573–3333
CA:			
CA1485 BEST WESTERN DEANZA INN	2141 N. FREMONT ST	MONTEREY, CA 93940	(800)858–8775
CA1487 SAN PEDRO HILTON AT CARRILLO MARINA.	2800 VIA CARRILLO MARINA	SAN PEDRO, CA 90731	(310)514–3344
CA1486 SONOMA HILTON AT SANTA ROSA.	3555 ROUND BARN BLVD	SANTA ROSA, CA 95403	(707)523–7555

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST FEBRUARY 19, 1997 UPDATE—Continued

Index property name	PO Box/Rt. No. street address	City, State/zip	Phone
CA1488 BEST WESTERN MOUNTAIN INN.	416 W. TEHACHAPI BLVD	TEHACHAPI, CA 93561	(805)822–5591
IL:			
IL0552 PARKWAY INN	2419 SPRINGFIELD ROAD	BLOOMINGTON, IL 61701	(309)828–1505
IL0553 BEST WESTERN WORTHINGTON INN.	920 W. LINCOLN AVE	CHARLESTON, IL 61920	(800)528–8161
ME:			
ME0059 GATEWAY INN	ROUTE 157	MEDWAY, ME 04460	(207)746–3193
MS:			
MS0116 BEAUJOLAIS VILLAS CONDOMINIUMS.	11263 GORENFLO ROAD	BILOXI, MS 39532	(601)396–1004
MS0115 GRAND CASINO HOTEL "BILOXI".	265 BEACH BOULEVARD	BILOXI, MS 39530	(601)435–8954
MS0114 BEST WESTERN MCCOMB	2298 DELAWARE AVENUE	MCCOMB, MS 39648	(601)684–5566
ND:			
ND0093 BEST WESTERN DOUBLEWOOD INN.	1400 E. INTERCHANGE AVENUE	BISMARCK, ND 58501	(701)258–7000
NY:			
NY0637 CORTLAND HOLIDAY INN	2 RIVER ST.	CORTLAND, NY 13045	(607)756–4431
NY0639 QUEENSBURY HOTEL	88 RIDGE STREET	GLENS FALLS, NY 12801	(518)782–1121
NY0642 LAKE PLACID HILTON RESORT	1 MIRROR LAKE DRIVE	LAKE PLACID, NY 12946	(518)523–4411
NY0641 OWEGO TREADWAY INN	1100 STATE RT. 17C	OWEGO, NY 13827	(607)687–4500
NY0640 RADISSON HOTEL	200 GENESEE ST	UTICA, NY 13502	(315)797–8010
NY0638 CASTEL GRISCH	3380 COUNTY RTE. 28	WATKINS GLEN, NY 14891	(607)535–9614
OR:			
OR0212 BEST WESTERN HERMISTON INN.	2255 HWY 395 S	HERMISTON, OR 97838	(541)564–0202
TN:			
TN0319 CHATTANOOGA RESIDENCE INN BY MARRIOTT.	215 CHESTNUT ST.	CHATTANOOGA, TN 37402	(423)266–0600
TN0317 COUNTRY SUITES	7051 MC CUTCHEIN RD	CHATTANOOGA, TN 37421	(423)899–2302
TN0316 DAYS INN RIVERGATE	901 CARTER ST.	CHATTANOOGA, TN 37402	(423)266–7331
TN0321 STUDIO PLUS-MEMPHIS/CORDOVA.	8110 CORDOVA CENTER DR	CORDOVA, TN 38018	(901)954–4030
TN0318 FRENCH QUARTERS SUITES HOTEL.	2144 MADISON AVE	MEMPHIS, TN 38104	(901)728–4000
TN0320 HOLIDAY INN EXPRESS-SOUTHEAST AIRPORT.	981 MURFREESBORO RD	NASHVILLE, TN 37217	(615)367–2890
CORRECTIONS/CHANGES			
AZ:			
AZ0257 LA QUINTA INN #939 FLAGSTAFF.	2015 S. BEULAH BLVD	FLAGSTAFF, AZ 86001	(520)556–8666
CA:			
CA1263 BEST WESTERN EXECUTIVE INN.	18880 E. GALE AVE	ROWLAND HEIGHTS, CA 91748	(818)810–1818
CA0941 TORRANCE HILTON AT SOUTH BAY.	21333 HAWTHORNE BLVD	TORRANCE, CA 905036546	(310)540–0500
MD:			
MD0253 BEST WESTERN WASHINGTON GATEWAY HOTEL.	1251 W. MONTGOMERY AVE	ROCKVILLE, MD 20850	(301)424–4940
ME:			
ME0034 RADISSON HOTEL	157 HIGH ST.	PORTLAND, ME 04101	(207)746–5411
OR:			
OR0074 RODEWAY INN	1506 NE 2ND AVE.	PORTLAND, OR 97232	(503)641–6565
OR0043 WESTERN INN AT THE MEADOWS.	1215 N. HAYDEN MEADOWS DR	PORTLAND, OR 97217	(503)286–9600
OR0004 SALBASGEON INN OF THE UMPQUA.	45209 HWY. 38	REEDSPORT, OR 97467	(541)271–2025
DELETION			
NONE.			

[FR Doc. 97–5269 Filed 3–3–97; 8:45 am]

BILLING CODE 6718–08–U

Federal Register

Tuesday
March 4, 1997

Part VI

Department of Housing and Urban Development

Community Development Work Study Program; Notice of Funding Availability for Fiscal Year 1997; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4189–N–01]

Community Development Work Study Program; Notice of Funding Availability; FY 1997

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1997.

SUMMARY: This notice invites applications from institutions of higher education, area-wide planning organizations (APOs), and States for grants under the Community Development Work Study Program (CDWSP). The CDWSP, authorized by the Housing and Community Development Act of 1974, as amended, assists economically disadvantaged and minority students participating in work study programs in such institutions. This notice announces HUD's intention to award up to $3 million from FY 1997 appropriations (plus any additional funds recaptured from prior appropriations) to fund work study programs to be carried out from August 1997 to September 1999.

DATES AND INSTRUCTIONS FOR OBTAINING APPLICATIONS: Applications may be requested beginning March 14, 1997. Applications must be physically received by the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control in Room 8230 by 4:30 p.m. Eastern Time on May 5, 1997. Facsimile (FAX) copies of the application will not be accepted. This deadline is firm as to date, hour, and place. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submissions of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

Application packages may be obtained by written request from the following address: HUD USER, ATTN: Community Development Work Study Program, P.O. Box 6091, Rockville, MD 20850. Requests for application kits may be faxed to: 301–251–5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to ''Document FR–4189.'' The application kit is also available on the Internet from the Office of University Partnerships Clearinghouse. The Clearinghouse can be accessed from the World Wide Web at: http://www.oup.org; or from a Gopher Server at: gopher://oup.org:78.

FOR FURTHER INFORMATION CONTACT: John Hartung, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Telephone (202) 708–3061, extension 261 (Voice). Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the ''800'' number, these are not toll-free numbers.) Mr. Hartung can also be reached via the Internet at jhartung@hud.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 *et seq.*) (the Act) authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students, including students with disabilities, who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community or economic development, community planning, or community management.

On July 10, 1996 (61 FR 36456), HUD issued a new final rule for the program, making several changes in program requirements. Among other revisions, the rule: (1) Limited the number of students assisted under the CDWSP to five students per participating institution of higher education; (2) limited the CDWSP to graduate level programs; (3) permitted institutions of higher education to apply individually or through APOs; and (4) streamlined the selection factors used to select grantees.

Two-year institutions are not eligible applicants for funding under this program. This notice announces HUD's intention to award up to $3 million from FY 1997 appropriations (plus any additional funds recaptured from prior appropriations). Awards will be made under the HUD implementing regulations at 24 CFR 570.400 and 570.415 and the provisions of this Notice.

B. Eligible Applicants

The following are eligible to apply for assistance under the program subject to the conditions noted below:

1. Institutions of higher education offering graduate degrees in a community development academic program.

2. Area-wide planning organizations (APOs) which apply on behalf of two or more institutions of higher education located in the same SMSA or non-SMSA area as the APO. As a result of the new final rule for the program issued on July 10, 1996, institutions of higher education are permitted to choose whether to apply independently or through an APO.

3. States which apply on behalf of two or more institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients.

C. Threshold Requirements

To be eligible for ranking, applications must meet each of the following threshold requirements:

1. The application must be filed in the application form prescribed by HUD, and within the required time prescribed by the Application Kit released pursuant to this notice.

2. The application must demonstrate that the applicant is eligible to participate.

3. The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must be an agency and must have the required staff and community development work study program to carry out its activities under CDWSP. Eligible work placement agencies must be involved in community building and must be an agency of a State or unit of local government, an areawide planning organization, an Indian tribe, or a private nonprofit organization.

4. Institutions of higher education, APOs, and States must maintain at least a 50 percent rate of graduation of students from the FY 1994 funding round which covered school years September 1994 to September 1996 in order to participate in the current round of CDWSP funding. Institutions of higher education, APOs, and States funded under the FY 1994 CDWSP funding round which did not maintain such a rate will be excluded from

participating in the FY 1997 funding round. Such institutions, APOs, and States are eligible to participate in the 1998 round.

D. Selection Factors (100 points)

The following factors will be considered by HUD in evaluating applications in response to the solicitation.

1. *Quality of academic program* (30 points). The quality of the academic program offered by the institution of higher education (or institutions, in the case an application from an APO or State), including without limitation the:

(a) Quality of course offerings;

(b) Appropriateness of course offerings for preparing students for careers in community building; and

(c) Qualifications of faculty and percentage of their time devoted to teaching and research in community building.

2. *Rates of graduation* (7 points). The rates of graduation of students previously enrolled in a community building academic program, specifically including (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs.

3. *Extent of financial commitment* (10 points). The commitment and ability of the institution of higher education (or institutions, in the case of an application from an APO or State) to assure that CDWSP students will receive sufficient financial assistance (including loans, where appropriate) above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours per week during the school year.

4. *Quality of work placement assignments* (15 points). The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building. Students engaging in community building projects through an institution of higher education may do so only through a community outreach center and will then be considered placed at that center. Accordingly, in assessing the number and variety of work placement assignments an applicant will make available to students, such a community outreach center will be considered a single placement assignment.

5. *Likelihood of fostering students' permanent employment in community building* (10 points). The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by:

(a) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates, where applicable) in permanent employment in community building; and

(b) The amount of faculty/staff time and resources devoted to assisting students (particularly students in CDWSP-funded and similar programs, where applicable) in finding permanent employment in community building.

6. *Effectiveness of program administration* (18 points). The degree to which the applicant will be able to effectively coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following three considerations, except that the maximum points available under this criterion will be allocated equally only between (a) and (b), where the applicant has not previously administered a CDWSP-funded program.

(a) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(b) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so;

(c) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements).

7. *Commitment to meeting the needs of economically disadvantaged and minority students* (10 points). The applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by the policies and plans regarding, and past efforts and success in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

E. Program Policy Factors

HUD may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly rated applications as possible. In addition, HUD might award a lower funding level than the requested amount for tuition, work stipend, books and additional support.

In the event two or more applications have the same number of points, the application with the most points for selection factor (1) will be selected. If there is still a tie, the application with the most points for selection factor (6) will be selected.

F. Application Content and Review Procedures

Applicants must complete and submit applications in accordance with instructions contained in the application kit, and must include all certifications, assurances, and budget information requested in the kit. Following the expiration of the application submission deadline, HUD will review and rank applications in a manner consistent with the procedures described in this Notice and the provisions of the program regulations at 24 CFR 570.415.

G. Corrections to Deficient Applications

If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD may notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD may disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

H. Findings and Certifications

1. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and

responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order.

2. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

3. Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

b. HUD Responsibilities—Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

c. State and Unit of General Local Government Responsibilities—Disclosures

States and units of general government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each State and unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form.

4. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have ethics related questions should contact HUD's Ethics Law Division (202) 708–3815 (This is not a toll-free number.)

5. Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment), which prohibits applicants from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and Congressional staff regarding specific grants or contracts.

6. Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2528–0175. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

7. Environmental Impact

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321). In addition, the provision of assistance under this NOFA is categorically excluded from review in accordance with 24 CFR 50.19(b)(9).

I. The Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for the CDWSP is 14.234.

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

Date: February 18, 1997.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 97–5295 Filed 3–3–97; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Tuesday
March 4, 1997

Part VII

The President

Presidential Determination No. 97–17—Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Federal Register
Vol. 62, No. 42
Tuesday, March 4, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–17 of February 21, 1997

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1995, title VI, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Public Law 104–107 (''the Act''), I hereby:

(1) Certify that it is in the national interest to suspend the application of the following provisions of law through August 12, 1997:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

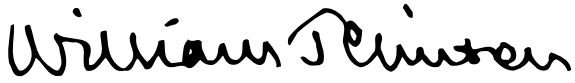
(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 5202); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization, the Palestinian Authority, and successor entities are complying with the commitments described in section 604(b)(4) of the Act.

(3) certify that funds provided pursuant to the exercise of the authority of the Act and the authorities under section 583(a) of Public Law 103–236 and section 3(a) of Public Law 103–125 have been used for the purposes for which they were intended.

You are authorized and directed to transmit this determination to the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, February 21, 1997.

[FR Doc. 97–5472
Filed 3–3–97; 8:45 am]
Billing code 4710–10–P

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